

**ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC
SECURITY INVESTIGATIONS (SMITH GUIDELINES)**

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

**ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC SECURITY
INVESTIGATIONS (SMITH GUIDELINES)**

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ATTORNEY GENERAL'S GUIDELINES FOR DOMESTIC SECURITY INVESTIGATIONS (SMITH GUIDELINES)

FRIDAY, MARCH 25, 1983

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:07 p.m., in room SD-226 of the Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Also present: Senators Hatch and East.

Staff present: Joel S. Lisker, chief counsel and staff director; Bert W. Milling, Jr., counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good afternoon. This hearing will come to order. I would like to welcome my colleague from North Carolina, who also serves as the chairman of the Separation of Powers Subcommittee. Senator East has been consistently involved and interested in the activities of this subcommittee. We appreciate it very much, Senator East, and welcome you again today.

Senator EAST. I thank the Chairman.

Senator DENTON. I want to welcome our two distinguished witnesses, D. Lowell Jensen, Assistant Attorney General, Criminal Division, U.S. Department of Justice, and William H. Webster, Director of the Federal Bureau of Investigation. Welcome, gentlemen, and thank you for taking time from your busy schedules to come down.

This hearing is the fifth in a five-part series held on the domestic security guidelines under which the Federal Bureau of Investigation has been operating since April 1976.

On February 4, 1982, during an FBI oversight hearing at which Judge Webster testified, the subcommittee examined in detail the problems posed by the "Levi guidelines." On that occasion, it was decided that it was desirable to hold separate hearings on the issue. Four subsequent hearings, the records of which have been published, were held on June 24, 25, August 11 and 12, 1982. On those occasions, the subcommittee received testimony about the extent of the limitations imposed on the FBI in the wake of Watergate and the COINTEL PRO revelations. It examined not only the language of the 1976 domestic security guidelines but, more important, how that language is interpreted by Bureau officials and how the policy

derived from those interpretations affects the Bureau's ability to collect domestic intelligence.

During our first four hearings, we received testimony from representatives of the Federal agencies that the guidelines have impacted, such as the FBI, the U.S. Secret Service, and the U.S. Park Police. We also heard from four witnesses, each of whom was in a special position by virtue of long experience in this area of intelligence, to offer valuable observations on the practical effects of the "Levi guidelines" on those charged with gathering the information that is necessary for the protection of our internal security.

We also heard the testimony of representatives of municipal law enforcement agencies that have also been adversely affected by these [Levi] guidelines, specifically the Los Angeles Police Department and the Metropolitan Police Department in Washington, D.C.

The FBI has established a reputation that distinguishes it from every other major law enforcement agency in the world. Its consistent dedication to the ideals of professional Federal law enforcement has long served as a model in our country and abroad. The rigorous standards it has set for itself are as high as those found anywhere.

Then, several years ago, with the advent of the Levi guidelines, the FBI entered into what might be termed uncharted waters, especially with respect to its shift away from an earlier concentration on street crime, an area in which the States seem to be operating effectively. In the new priority areas of white-collar crime, organized crime, and espionage, it has achieved substantial successes, for the imaginative investigative techniques it has developed have brought about startling results and a record number of convictions. The achievement is truly noteworthy and something in which all Americans can take pride.

Further, the Bureau has allocated substantial resources to the problem of foreign counterintelligence. It has established a section within its Criminal Investigative Division to deal with terrorism. As chairman of the subcommittee dealing with that area, I am gratified to learn of Judge Webster's decision to elevate terrorism to one of the four national investigative priorities of the FBI.

However, it appears that in the reordering of priorities and the restructuring of the complements within the Bureau that deal with substantive foreign counterintelligence and domestic security, an important aspect of the Bureau's work may have fallen through the cracks. What seems to have been missing was a Federal focus on organizations and individuals that cannot be shown to be controlled by a foreign power and which have not yet committed a terrorist or subversive act, but which nonetheless may present a substantial threat to the safety of Americans and, ultimately, to the security of our country.

The organizations of which I speak may present themselves as seeking the same goals as other legitimate organizations committed to and working for high ideals. We know that, in the past, movements such as that to support the Republican government during the Spanish Civil War, the neutralism movement prior to World War II, the movement after World War II to get the boys home, and the movement against the war in Vietnam were exploited in precisely that way. In the future, the enemies of society may

choose to take advantage of popular sentiment about issues such as nuclear power, aid to nations under attack by Communist terrorists, or racism. They may seek to find support from and exploit organizations committed to causes such as civil rights reform, prison reform, or a nuclear weapons freeze.

Recognizing the limitations that heretofore have been imposed on the FBI, they would understandably attempt to hide themselves—that is, these groups would—among other groups in areas well protected by the first amendment and thereby escape the scrutiny of the Bureau.

And, of course, there are groups that are open in their stated purpose of acting by violence and in their advocacy of terrorism. It is obviously vital for us to have current information on them.

The people of this country look to the FBI as the single agency responsible for investigating activities that were once called subversive. For many of these activities, we have lately developed euphemisms, and the resulting attention to labels rather than to substance has inhibited a full appreciation of the magnitude of the problem.

The Socialist Workers' Party, the Progressive Labor Party, the Weather Underground Organization, the May 19 Communist Organization, the Republic of New Africa, and the Black Liberation Army all clearly oppose our democratic ideals. All of those groups favor the overthrow of the Government of the United States by force and violence. They operate effectively through a variety of fronts and some of their members cross over and participate in organizations that are essentially nonviolent but which indirectly support and sustain the smaller groups that have nefarious purposes.

For example, the Weather Underground Organization has surrounded its core leadership with protective concentric structures, fronts, and organizations or supporters. These include a surface support group called the Prairie Fire Organizing Committee, as well as the John Brown Club and the May 19 Communist Organization. These groups would not even be under investigation under the Levi guidelines, were it not for the violent criminal activity in Nyack, N.Y., in which two policemen and one guard were killed.

According to FBI statistics, during 1982 there were 51 incidents of domestic terrorism, up more than 20 percent over 1981. At this time of increasing terrorist activity, I believe that the American people need an organization that has the capability, the desire, and the understanding of the level of the threat to see through propaganda and false colors so that the American people can be informed of the threat presented by organizations committed to the destruction of our freedoms. When I speak of a threat, I do not mean just that an organization is, or is about to be, engaged in violent per se criminal activity. As I have said previously, there are many that share my view that the support groups that produce propaganda, disinformation, or legal assistance may be even more insidious than those who actually throw the bombs.

In his testimony on June 24, 1982, Director Webster acknowledged that some modifications of the domestic security guidelines were in order and stated that, to that end, a review of the guidelines by the FBI and the Department of Justice was underway.

Those changes have now been incorporated in a new document which was provided to the subcommittee by the Department of Justice on Wednesday, February 24, 1983.

The subcommittee has now had the opportunity carefully to review the Smith revisions to the Levi guidelines. We are anxious to have the benefit of the views of the Department of Justice and the FBI as to their interpretation of the nature and degree of improvements to the guidelines.

Today, therefore, I am pleased to welcome the two witnesses, and after they have had an opportunity to make a preliminary statement, following Senator East's opening remarks, the subcommittee will raise with each of them questions so that we can nail down the Bureau's interpretations through responses to questions posed dealing with specific hypothetical and factual situations.

I would say parenthetically that although the number of incidents of domestic terrorism has been mentioned, I consider these incidents a drop in the bucket compared to what could occur in this country given the vulnerability of this country to terrorism. Nations like Uruguay, which had no terrorism for decades, were suddenly hit by a flood of it.

Presidents of Christian Democratic Parties, which are left of center, from a number of countries in South America, told me in recent meetings in Central America that they are afraid to speak out publicly in support of the U.S. policy in Central America because of their awareness that Communist terrorism could be introduced abruptly into their country with disastrous circumstances, as has been done in the past in so many of them. The United States has not yet been ripe in that sense.

The terrorists worldwide use a common handbook for urban guerrilla warfare, and you can find that handbook in Detroit, Los Angeles, Mexico City. It was written by Carlos Marighella. Many in the Congress are not perceiving the nonunique or common aspects of the situation in Nicaragua and El Salvador. The presidents of Christian Democratic Parties, with whom I spoke, do perceive the commonality in that situation down there, but they are afraid to speak out because of their vulnerability to terrorism, which has, in so many cases in Latin America, been manifest. In the United States, it has not yet been manifest, to the same degree, although we have had a President take a bullet in the belly, we have had another President assassinated, we have had what you could call terrorism during the sixties and seventies.

However, when our time comes, I believe the Federal Bureau of Investigation has to have a general plan for coping with it, hopefully before when they see indications of it or, at a minimum, when indeed it breaks out, because we are vulnerable. We are the most open society on the face of the Earth, and terrorism is a new and very potent political force which has not been used in this country to a large degree. So I don't want to pretend that I am overly concerned by the 51 incidents of terrorism in last year. The fact that it is occurring and the increase from the previous year is cause for concern, but I consider the level of terrorism in the United States to be small when compared to that occurring in other parts of the world. It's the potential for terrorism in the United States that concerns me.

Finally, I want to insert in the record a copy of the Attorney General's press release concerning the new guidelines and a copy of the new guidelines, along with several related documents.

[The Attorney General's press release, the new guidelines, and two other related documents are found as exhibit A-D, beginning on p. 47 in the appendix.]

Senator East, do you care to make an opening statement?

OPENING STATEMENT OF SENATOR JOHN P. EAST

Senator EAST. Mr. Chairman, I appreciate the opportunity. I wish to congratulate you for holding these hearings, and I would certainly like to thank the Director for the very cooperative attitude that he has shown toward the subcommittee. It's been a great pleasure to work with him.

I have had the opportunity to be a part of this discussion on the guidelines review and reconsideration, and, again, I would thank the Director and the Justice Department and the FBI for helping this committee, under the leadership of Senator Denton, as much as they could.

I do not wish to detain at any length here the proceedings this afternoon, except, one, to thank the Director and thank the chairman of the subcommittee. I have myself felt that it was important that the so-called Levi guidelines be reviewed. It did occur to me, and to a number of critics, that they unduly restricted the opportunity for the Federal Bureau of Investigation to keep track of, to monitor, to prevent potential terror or violence against persons and property in the United States. We seem to have, as Senator Denton has suggested, a rather unique problem today, more so than we have had in the past, where violence, or terrorism, as we sometimes call it, is being used principally today not for more conventional crime, such as just a straight bank robbery or whatever, but is used to further ideological aims of all kinds.

And so we run into a very genuine problem that occurred to me, and I think many critics: We have a problem of, one, adequate intelligence to prevent rather than simply to react to an after-the-fact crime. Hence, the principal problem was the criminal predicate, the criminal standard, that was required before you could really get into a serious investigation.

The purpose, then, at least as I saw it, in revising the guidelines was to see if they did not unduly restrict the Federal Bureau of Investigation having to deal with what is a relatively novel problem today, at least the magnitude of it; namely, this problem of violence and terrorism, which is not of a conventional criminal nature but to further particular ideological aims. Again, we are back to the problem of intelligence and prevention.

And certainly the minimal thing that any government can do, and ought to do, as a matter of fundamental political theory, is to be able to protect its citizenry from force and violence, whether it be of a conventional criminal nature where perhaps a criminal standard is adequate, or, again, in this new era, to protect us from violence and terrorism brought about by those pursuing primarily particular ideological aims.

I would like to make it clear, at least from my standpoint, that that is the spirit in which I have gone into this. And, again, I wish to thank the Bureau for its cooperation.

I suppose another way one might look at it is, any so-called guidelines have to be periodically reviewed; I suppose by definition they do. They are to guide, they are to suggest, to point to limits, or to whatever it is you are doing. And I would suspect whether they are restricted guidelines or more expansive guidelines, that they are of value to the individual agent and to the Bureau, particularly the individual agent, so that he knows what his limits are and what he can expect to do or not be expected to do.

So that is the spirit in which I have gone into this.

One final comment I would like to make, and I think the Director has brought this out very effectively throughout all of these hearings, that whatever one does with the guidelines, perhaps in the long run our more fundamental problem, in terms of making the FBI a more effective organization in terms of its agents, whether it's dealing with activity of this kind, ideological terrorism, or traditional conventional crime, is revising the Federal Tort Claims Act, so that the agents are genuinely protected from potential lawsuits—this is probably more inhibiting really, you were suggesting, in their willingness to get a bit further out on the point than our so-called guidelines. But that is a separate problem that I feel very strongly we need to take up in due course. I think, in my own judgment, it ought to be the next phase in the activities of the committee. It seems to follow a logical sequence.

But nonetheless the current business before the subcommittee is the guidelines, and again I thank the chairman for his leadership on this, and I thank the Director for his very cooperative spirit.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator East. We are delighted to welcome the distinguished Senator from Utah, who serves as chairman on the Labor and Human Resources Committee. He is also chairman of the Subcommittee on the Constitution under the Judiciary Committee. We are honored to have him with us this afternoon.

If you have an opening statement, Senator Hatch, we would be pleased to hear it.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Senator Denton. Mr. Director and Mr. Assistant Attorney General, we are very happy to welcome you here and pleased to be able to discuss these matters with you.

I just want to personally express my appreciation for the courage and the leadership that both of you have provided in this country in our fight against not only organized crime, and all of the ramifications thereof—including the drug wars that are going on presently—but also in changing these guidelines and being willing to look into the effect that might occur as the result of those changes.

I have inestimable respect for both of you, as you know, and I just hope that you will continue to assert the leadership that I have seen asserted since I have been here in the Congress in all of these crucial areas.

As I see organized crime in America today, I see almost a wide-open country with almost no checks or balances. This openness not only involves the drug area, but includes the foreign criminal area, the Cosa Nostra. As you know, in the Labor Committee we have spent a considerable amount of time discussing the Cosa Nostra.

I personally, Mr. Director, have appreciated the leadership that you have asserted in the Freedom of Information and Privacy Act problems. Your testimony both openly and in secret before our committee—the Judiciary Committee in particular—has helped us to understand the difficulties that you have in enforcing the laws as a result of problems created by the Freedom of Information Act and the Privacy Act. And yet you are firmly committed to the implementation of these acts and to keeping them alive, and in so doing keeping the public aware of what needs to be done, what you as an agency are doing, and what the Government is doing as a whole, so that we may have an open society. We need to balance this openness with the considerations that society has for its own self-protection, for the protection against known criminal elements in our society. And, I might add, for the protection even against subversive elements.

In the hearings held on the Freedom of Information Act, we found that foreign nationals are acquiring a lot of information that is being used very detrimentally to our business interests, to our national security and a number of other interests, including the ability to clamp down on organized crime as it exists not only here but worldwide.

So I just want to personally thank you for that and for the leadership that you have asserted in that area. And I am pleased to tell you that we are working again on the Freedom of Information reform bill and we hope we can get it through the Senate this year and then through the House of Representatives so that the reform and the changes can occur without stopping the openness of government which all of us would like to see.

It takes courage to do these things, and I just want to personally congratulate you and Mr. Jensen for your leadership that you have given to us.

Thank you, Mr. Chairman.

Senator DENTON. Thank you, Senator Hatch. Well, after those opening statements, we are ready for the opening statement of the Assistant Attorney General, Criminal Division, D. Lowell Jensen.

STATEMENTS OF D. LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, AND WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. JENSEN. Thank you very much, Mr. Chairman, Senator East, Senator Hatch. I am pleased to appear today with FBI Director Webster to discuss with you the Attorney General's revised guidelines governing FBI domestic security and terrorism investigations.

I am aware that you have already received copies of the guidelines, which went into effect on Monday, March 21, and Department of Justice officials in recent weeks have had the very helpful

opportunity to discuss questions concerning the guidelines with some of you and with your staffs.

Accordingly, Director Webster and I are prepared to continue this dialog by spending most of our time here today responding to your questions or concerns. First, however, I would like briefly to describe for you the results of our review and revision process and our reasons for undertaking this effort.

I am very pleased with the results of our efforts. The guidelines will continue to do what they were designed to do: Protect the constitutional rights of law-abiding citizens while insuring that the FBI can effectively conduct those investigations which are necessary to protect our citizens from terrorists and other criminals.

A principal goal of the Attorney General in approving these revisions has been to acknowledge that investigation of groups which engage in criminal violence for political or racist purposes is a critical component of FBI law enforcement activities. Domestic security/terrorism investigations should not be the subject of entirely separate regulations; hence, these revisions integrate guidelines governing investigation of terrorist enterprises with the guidelines which since 1980 have governed criminal investigations of individuals and racketeering enterprises operating for profit. At this time, substantive changes have only been made in the domestic security/terrorism portion of these combined guidelines.

A number of factors have prompted these revisions. We have had 7 years' operational experience with the 1976 Attorney General's guidelines on domestic security investigations. As some of you will recall, the 1976 guidelines were the first of their kind, and were promulgated on a trial basis. Since 1976, we have also had experience with other more recently promulgated guidelines, particularly including the Attorney General's combined guidelines on general crimes investigations and investigations of racketeering enterprises. Moreover, we have found that the FBI today is confronted with a wider variety of terrorist organizations, with more fluid membership structures, than was the case several years ago.

This 7 years' experience with the former guidelines has been carefully reflected in the current revisions. The guideline revisions resulted from an extensive 8-month-review process overseen by the Attorney General and involving much of the Department of Justice leadership, including Director Webster and myself.

After that review process, the Attorney General concluded that guidelines do serve important functions and that the 1976 guidelines were an extremely good effort, but that some revisions of those standards were necessary to respond to current law enforcement circumstances and to clarify certain ambiguities identified by Director Webster and his field personnel. The integration of all FBI law enforcement investigation guidelines into one document, in our view, will provide this clarification for our field agents and will also enhance the effectiveness of our terrorism investigations by applying to these investigations the concepts and standards which have effectively governed our racketeering enterprise investigations in recent years.

Let me outline some of the principal features of the revisions which will be of interest to this subcommittee.

THE CRIMINAL ENTERPRISE APPROACH

Application of the criminal enterprise approach used in organized crime investigation allows the FBI to cross organizational lines in a domestic security/terrorism investigation without regard to what a particular group or element in an organization might call itself. This enables the FBI to deal more effectively with groups which knowingly support the criminal objectives of a violent group. If, for example, persons are knowingly providing safe-houses or financing the criminal activities of a terrorist group, they would be investigated as part of the same criminal enterprise. This avoids the necessity of opening a separate investigation of the supporting group, with a separate justification.

The new approach recognizes that terrorist groups today have a fluid membership and often lack organizational structure, yet function as a single enterprise directed toward a common goal. This approach will also permit the FBI to focus upon violent factions of a larger organization without having to place the whole organization under investigation.

LEVELS OF INVESTIGATION

The approach authorizes a single level of investigation for domestic security/terrorism investigations: a criminal intelligence investigation. This permits the full range of investigative techniques when an investigation is begun, although fourth amendment techniques such as electronic surveillance, still require the usual "probable cause" showing.

Inquiries short of a full investigation would be conducted under general crimes authority, and would be used to determine whether leads indicating specific criminal activity warrant full investigation. This approach not only eliminates the complexity of the current three levels of investigative authority—imposing differing standards and restricting the use of techniques at different levels—but also draws a sharper distinction between inquiries related to specific criminal conduct and intelligence investigations focused on an entire enterprise.

STANDARD FOR A DOMESTIC SECURITY/TERRORISM INVESTIGATION

An investigation can be conducted when the—

Facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States.

This reasonable indication threshold to initiate an investigation does not require that a crime be completed or be imminent, and has worked well in practice in FBI general crime and racketeering investigations. The standard does not require probable cause and is satisfied if the circumstances indicate that the group is engaged in activities that will involve force or violence in violation of Federal law now or in the future.

THE ADVOCACY ISSUE

There has been some confusion in the past about whether advocacy of crime can provide the basis for an intelligence investigation. This uncertainty stems, in part, from understandable first amendment concerns and the silence of the 1976 guidelines on this subject. The new draft makes it clear that statement of intent to commit a crime is not immune from investigation.

When statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an inquiry or investigation may be warranted. If it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm, then further inquiry would not be authorized.

Normally, these matters can be checked out in the context of a preliminary inquiry, and lawful political dissent will be no more subject to investigation than under the 1976 standards. However, it must be made clear to our agents that when words credibly indicate that criminal violence may follow, our responsibility to protect the public calls for reasonable further inquiry.

PUBLICLY AVAILABLE INFORMATION

The guidelines explicitly authorize the FBI to collect publicly available information to the full extent permitted by the Privacy Act of 1974. We are currently studying the provisions of the Privacy Act, which have not yet been definitely construed, to determine the full scope of FBI authority in this area.

CONTINUED MONITORING OF ENTERPRISES WARRANTING INVESTIGATION

Under the old guidelines, there was a troubling tendency to close investigations and terminate informant coverage when the violent activity of the group had been dormant for a period of time. If the organization became active again, it was often a difficult and time-consuming process to redevelop effective informant coverage. The new guidelines would permit the FBI to monitor organizations which may be temporarily inactive, but whose prior record or stated objectives indicate a need for continuing Federal interest, so long as the minimum standard for investigation is satisfied.

These guidelines also expressly authorize cooperation with the Secret Service on matters of investigative interest to that agency and contain provisions permitting dissemination of investigative information to other agencies for lawful purposes.

We will be watching carefully the results of these guideline revisions in practice. They are not immune from further revision based upon practical experience, and the Attorney General welcomes your comments as we observe the results of implementation. In my view, these changes effectively achieve both strong law enforcement and the safeguarding of individual rights, and I am pleased to have been a part of this process.

That concludes my statement, Mr. Chairman.

Senator DENTON. Thank you very much, Mr. Jensen.

Would you proceed, Judge Webster?

Mr. WEBSTER. Thank you, Mr. Chairman.

At the outset, I would like to express my appreciation to you and to the other members of the committee here today for the support that you have evidenced by your statement and specifically to thank Senator East for noting the need for attention to the amendments to the Federal Tort Claims Act and Senator Hatch for his commentary on the need for improvements of the Freedom of Information Act, both of which in addition to what we are here to discuss today, would in my judgment materially increase our capacity to discharge our commitment to do the work that the American people expect of us within constitutional means.

Mr. Jensen has described the more significant features of the new domestic security guidelines and there is little that I can add to his comments.

As you may recall, Mr. Chairman, I appeared before the subcommittee in June 1982 and outlined some of the problems we had experienced under the old rules. The guidelines which became effective last Monday address these concerns. They are the product of more than 8 months of review by both the Department of Justice and the FBI, including FBI Headquarters and field personnel. These changes could not have been accomplished without a close cooperative working relationship between the Bureau and the Department and the willingness to deal with some of the most sensitive issues that confront us in law enforcement today. I am very pleased with the final product and it has my full support.

As you know, Mr. Chairman, the 1976 guidelines were originally promulgated on a trial basis with the understanding that they would be reviewed after our experience under them could be adequately assessed. Other guidelines issued at that time, such as the foreign intelligence and counterintelligence guidelines, have already been reviewed and revised. The new domestic security guidelines do not reflect any major changes in policy or shift in direction; they are merely part of the normal evolutionary process in the development of effective and workable rules.

In our view, the old guidelines were no longer adequate to guide us in dealing with the kinds of terrorist groups that we are confronted with today. For the most part, these groups are small, cohesive, and difficult to penetrate. The organizational structure is more fluid and ill-defined than that of groups that we have dealt with in the past and they often receive direct support for their criminal activities from others outside the organization. This is a primary reason for adopting the enterprise concept.

In addition, it has also become necessary for us to continue our investigations for longer periods of time than had been the practice in the past. There have been, as we have seen in the Brink's case, example of violent groups going quiet for sustained periods of time and then becoming violent again. If we discontinued that investigation, we were required to close out the informants. The new rules permit us to maintain a low-level investigation of such groups so long as the threshold standard is satisfied. This improves our ability to detect violence before it occurs and to reduce it before it spreads.

Added to these concerns was the growing complexity to field agents of different sets of guidelines that have been adopted over the years providing different standards, different reporting periods,

and different approval levels for investigations that are closely related. The integration of the domestic security guidelines with other provisions governing criminal and criminal intelligence investigations permits us to streamline the rules for the agents who must conduct these investigations. It should also promote a greater degree of consistent performance.

These guidelines do not alter our clearly stated obligation to respect constitutional safeguards reflected especially in the first amendment. They do permit us, consistent with that obligation, to seek an earlier interdiction of unlawful violent activity.

The advocacy provision has provoked more comment during this review process than any other section of the guidelines. That provision makes it clear that statements that advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, may justify investigation unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

This provision does not stand alone. It should be read as guidance in implementing the provisions governing preliminary inquiries and full investigations.

As the Attorney General indicated, statements advocating criminal activity must be viewed in context before further inquiry or investigation will be authorized. Advocacy of unpopular ideas or political dissent alone is not an adequate basis; but when a group declares its intent to engage in criminal violence or urges others to do so, we cannot be expected to ignore their words or assume they do not mean what they say.

A preliminary inquiry can be conducted in these circumstances only when the statements indicate "the possibility of criminal conduct," and even when such an inquiry is opened, its purpose is solely to obtain "the information necessary to make an informed judgment as to whether a full investigation is warranted." Advocacy of crime may result in the initiation of a full general crimes investigation when it constitutes facts or circumstances that reasonably indicate that a Federal crime has been, is being, or will be, committed. It may lead to the opening of a domestic security/terrorism investigation when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise that seeks to accomplish political or social change through violence.

It is likely that in most instances a preliminary inquiry will be all that is necessary to determine whether the advocacy or violence signals a real threat of crime. We are not prepared, however, to rule out the possibility of a full investigation based on such advocacy, particularly where the statement itself indicates not only the intent to pose an immediate threat to human life but the apparent capability to carry out that threat.

In summary, Mr. Chairman, our experience under the old standards has been useful in sharpening the rules and improving our effectiveness without diminishing important safeguards that have been in place over the past several years.

Mr. Chairman, that concludes my prepared testimony and I would be pleased to answer any questions the subcommittee might have.

Senator DENTON. Thank you, Mr. Director.

I will ask one question and then in deference to Senator Hatch's need to depart, with Senator East's concurrence, I will turn the questioning over to Senator Hatch.

Gentlemen, I have said both publicly and privately, after reading the new guidelines, that I think they are a considerable and very needed improvement. However, I am not grounded in years of experience in this area. I am advised that sometime such apparent improvements do not take place for one reason or another and I am disquieted by the statement by the gentleman over on the House side who has jurisdiction over this matter. In a press release he said, regarding the new guidelines, that in private discussions FBI and the Department of Justice have assured members of the committee that no loosening of the Levi guidelines is intended and that this is not a signal to expand domestic intelligence. He goes on to say, "We would like the Department and the FBI to give us those same assurances in public, especially since some changes appear to be significant."

I would have to ask your comment on that. Would you agree that you have given private assurances that there is no loosening of the Levi guidelines, not even intended?

Mr. JENSEN. Mr. Chairman, I may say that as far the Department is concerned, I know of no such assurance. I do not know what the statement alludes to or what kind of conversation it may be supposed to be based upon, but I do not think that statement would be correct in the sense that these guidelines do change the Levi guidelines. I don't think that is anything other than a characterization; to the extent that they make investigations more effective and appropriate, it could be termed a loosening. In that sense, I would think that the change in the guidelines has been significant.

Senator DENTON. All right.

That came from a press release issued by Congressman Don Edwards, Democrat of California, chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights, on March 7, 1983. He made a number of other comments that I won't quote because of the constraints of time. But I did feel it essential for the record to address that particular statement.

Director Webster, would you care to answer that part.

Mr. WEBSTER. Mr. Chairman, as I said in my opening statement, these revisions are not revolutionary; they are evolutionary. The purpose is to improve the guidelines and make them more—permit us to do a more effective job without in any sense intending us to engage in constitutionally proscribed activities or step unreasonably upon first amendment rights which, of course, have some limitation.

As Mr. Jensen says, by permitting us to look in the enterprise way at a number of organizations rather than to have a rather complicated threshold requirement as to each group, we have an opportunity to have more effective intelligence; by permitting us to stay in business longer at a low-level monitoring, we increase the probability that our informant base will remain intact rather than close out and develop it at a later date; thus holding out to us an opportunity, we think, to do a more effective job of interdicting terrorism before the bomb, as I said, goes off.

I don't think that those improvements constitute any form of unleashing the FBI upon the first amendment rights of our citizens. None is intended. We simply want to be able to apply common-sense principles to developing an intelligence where crimes of violence against our society are being contemplated, planned, or executed.

Senator DENTON. I understand and appreciate, Director Webster, your respect for constitutional restraint. I also understand the reasons for issuance of the Levi guidelines in the first place.

We have experimented with the Levi guidelines for good reasons, but I don't think it is a play on semantics to say that, in this particular case, there has been a loosening of the restrictions. I didn't say anything about unleashing the FBI to violate constitutional restrictions or civil rights. I am simply asking if, in private discussions, these guidelines have been characterized as no loosening of the Levi guidelines being intended. It seems to me the opposite of the truth to make such a statement.

Mr. WEBSTER. Mr. Chairman, I am sure that you didn't conclude from what I said that I was referring to any statement that you had made. I am talking about the general criticisms that come with any attempt to modify or improve guidelines that were put in place several years ago. At that time, at the very time it was put in place, it was contemplated that they were experimental and that they would change. They are to guide us, and part of the course of guidance is based on experience. We are now attempting to put that experience to work for us in developing a more effective set of guidelines which the Attorney General has promulgated.

Senator DENTON. But I am asking a specific question which I thought Mr. Jensen did answer, and perhaps I have not made the question clear to you, sir. But the press release says that in private discussions FBI and DOJ have assured members of the committee, that is Edwards', that no loosening of the Levi guidelines is intended, this is not a signal to expand domestic intelligence.

I personally believe that these new guidelines are intended to be a loosening of the Levi guidelines, still within constitutional bounds, but they are a loosening, in my opinion. If you have assured him to the contrary, then let it be said for the record that you have.

Mr. WEBSTER. I have given no assurances of that kind. I participated in a number of briefing sessions with members of the Congress. The only assurance that I can recall that has been given to anyone is the one that I have just stated; that this is not stripping the FBI of all guidance and restraint; it is an evolutionary process and one which is made with full awareness of our responsibility, as I said in my opening statement, to respect and defend constitutional safeguards.

Senator DENTON. All right. It appears to me that the various new characteristics of the guidelines such as the criminal enterprise concept, the monitoring of an organization beyond the point it has been violent because it might resume its violence, the standard for domestic security/terrorism investigation, the advocacy issue; those are all changes in the direction of what I think any American or English-speaking person would qualify as loosening. I didn't say criminally loosening, unconstitutionally loosening, but loosening,

after having been overly restrictive. But it appears to me that we have tended to loosen them, having experimented with a set of guidelines that were overly restrictive regarding the true constitutional restrictions and the useful guidance which should be issued to the FBI in view of its duties.

If that is not a correct statement, sir, I hope you will correct me. I am just trying to carry out my function as one who oversees the FBI.

Do you have any objection to what I just said?

Mr. WEBSTER. I would prefer, if I had my druthers, not to get into semantical contests between two Members of the Congress, but it is clear that these guidelines do not unleash, so it is really a question of degree.

Senator DENTON. The word was never used, sir.

Mr. WEBSTER. No, I know. And I don't know where the word came from, and I—

Senator DENTON. "Loosen" was the word. We are not saying "unleash."

Mr. WEBSTER. The guidelines really speak for themselves. The extent to which as a result of these changes we are able to develop more effective intelligence, to interdict terrorist activity before it occurs and our performance under these guidelines, hopefully with the assistance of the legislation proposed by Senator Hatch and Senator East, will be the true measure of whether these guidelines have been loosened or not.

Senator DENTON. Well, I can certainly—

Mr. WEBSTER. It would certainly tend to make us more effective and we do not intend them to be more restrictive, so you can reach your own conclusion about whether that is loosening or not.

Senator DENTON. All right.

I didn't mean to engage in semantics. I simply want to clarify the difference between Mr. Edwards' characterization of what had been privately assured and that which I got out of these guidelines. It makes me wonder if there is not a great deal of validity to the charge or allegation that there is a great deal of difference between what the Attorney General puts out and the interpretation of the words and spirit of what he has said. So I shall be vigilant in respect to that standard.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Again, I would like to compliment both of you for your earnest fight against organized crime, terrorism, and of course in helping the American people be more secure in this country.

I think maybe the way to ask this question is, literally: Are these two proposed changes going to violate any constitutional principles?

Mr. JENSEN. No, sir. As the Director has pointed out, they are drafted in such a fashion and necessarily will be drafted in a fashion that they will not tread upon any constitutional protection. They are set up to track existing descriptions and guidelines in place within the Department of Justice and the FBI for various types of investigative techniques.

Senator HATCH. In other words, the purpose of these guidelines is to help the Justice Department and the FBI to become more effec-

tive in stamping out organized crime and terrorism and keeping the people in this country secure and free; is that correct?

Mr. JENSEN. I think that is absolutely correct.

Senator HATCH. Do you think that is correct, sir?

Mr. WEBSTER. I certainly do, sir.

Senator HATCH. And is it true that your office is specifically required to show probable cause, and to get a warrant before any searches or wiretaps; is that correct?

Mr. JENSEN. That is correct. That is specifically stated in the guidelines in terms of where those kinds of techniques may be used. All investigative techniques are dealt with in the guidelines.

Senator HATCH. You still have to comply with what Congress has set down and mandated with regard to the use of searches or wiretaps or any other form of criminal surveillance?

Mr. JENSEN. That is correct, sir.

Senator HATCH. I would like to have both of you answer.

Mr. WEBSTER. Yes, that certainly is correct. I think we can perhaps anticipate some of your questions by saying that guidelines are by nature restrictions on limitations placed first in the Constitution and then by statute. A guideline cannot enlarge a statute or infringe upon the Constitution.

Senator HATCH. I particularly like the way you explain it, Director Webster and Assistant Attorney General Jensen, in saying that this is an evolutionary process, the purpose of which is to help our law enforcement agencies to act properly but yet effectively in protecting the American people from these influences; is that correct?

Mr. WEBSTER. That's correct.

Senator HATCH. And that you will live within constitutional guidelines?

Mr. WEBSTER. Absolutely.

Senator HATCH. And that you will abide by the law?

Mr. WEBSTER. Certainly.

Senator HATCH. And that we still have the same prohibitions and protections that the Congress has outlined, still in effect even with these changes, assuming that they become the final guidelines?

Mr. JENSEN. That is correct.

Senator HATCH. And I also assume that even if this is an evolutionary approach, evolutionary for the better, approach, that these may not be the final guidelines and as we learn more and more about organized crime and terrorism and subversive conduct in America; that is, conduct that is adverse to the interests of this country, that we may evolve these guidelines to the point where they will still live within the constitutional frameworks but still protect the American public and the American citizens; is that correct?

Mr. WEBSTER. That's correct. And I certainly would hope that these and all other guidelines under which we work will not become so sacrosanct by having been adopted that they cannot and will not be reviewed on a regular basis; because that would destroy the flexible nature of a guideline and it was taken from the statute.

Senator HATCH. Well, maybe the guidelines were considered sacrosanct, by some people, but they are not—they are just guidelines to help us to do our job better in protecting the American public.

You are saying this is an evolutionary improvement upon those guidelines, in your opinion, as far as law enforcement and your ability to provide law enforcement for the benefit of the citizens of this country; is that right?

Mr. JENSEN. That is right.

Senator HATCH. OK. Now, one other safeguard that assures us that there can be no abuse of law enforcement—

Mr. JENSEN. As the Director pointed out, these guidelines are premised upon existing limitations that are either within the Constitution or statutory structures. They make reference to those areas where there is a statutory basis for the use of an investigative technique. As you indicated, if there is to be electronic surveillance, it must track the legislative structure, and it must comport with constitutional principles. That's true throughout the guidelines so that they will be premised upon and limited by existing constitutional principles and statutory structures.

Senator HATCH. Director Webster, tell us just in a quick summary—and it is very difficult to summarize these types of details quickly—but as quickly as you can, just some of the organized crime elements that are in the country. We hear of the Mafia; we hear of La Cosa Nostra; we hear of certain Japanese organizations. Would you try to characterize those and describe them for us and what the extent of their power is and how widespread they are—what danger the American people are in, or undergoing as a result of the illegal and criminal activity of various groups in America.

Now, we are just talking about ordinary crime now. I am not talking about terrorist groups.

Mr. WEBSTER. Well, the impact of organized crime has been estimated in many billions of dollars annually.

Senator HATCH. We could say that just with regard to drug trafficking in this country, can't we?

Mr. WEBSTER. Indeed, we can.

Senator HATCH. It actually amounts to billions of dollars; is that correct?

Mr. WEBSTER. Many billions of dollars.

Senator HATCH. As a matter of fact, it even amounts to where we have to change the bail laws in this country and what we call the bail reform bill, because these drug traffickers have so much money that they can walk in and pay cash bail and then skip the country; is that correct?

Mr. WEBSTER. That's correct.

Senator HATCH. In other words, there are major, wholesale changes that we have got to bring about in this modern day and age to help solve the almost uncontrollable criminal element in this country just in the field of drugs and drug trafficking; is that correct?

Mr. WEBSTER. I think that's correct.

Senator HATCH. All right, continue. I didn't mean to interrupt you but I wanted to make those points.

Mr. WEBSTER. Well, if I were to do, as you say, briefly characterize the presence of organized crime, I would call attention to 25 or 26 major, traditional organized crime families which we category as LCN, or La Cosa Nostra. It is highly structured—

Senator HATCH. You say 25 or 26 organized families all over this country?

Mr. WEBSTER. All over this country, the major ones in——

Senator HATCH. In virtually every State?

Mr. WEBSTER. Pardon me?

Senator HATCH. In virtually every State?

Mr. WEBSTER. I can't say in every State, but I would say in about half the States we would find representatives or associates of those particular crime members, heavily based in New York, Philadelphia, Pittsburgh, Chicago, Detroit, Miami. We have seen major inroads in organized crime families in Buffalo, Cleveland—I am talking about law enforcement inroads—Buffalo, Cleveland, Los Angeles, and Kansas City.

In addition to these organizations, we are now confronted with large-scale outlaw motorcycle groups; that is, groups engaging in a variety of forms of crime, drugs, violent crime——

Senator HATCH. And terrorism?

Mr. WEBSTER. Pardon me?

Senator HATCH. And terrorism?

Mr. WEBSTER. And terrorism. To the extent that I have to think twice before I would include them in this particular type of domestic security guideline because we investigate them under another form of—particular type of criminal guidelines because of their organized enterprise activity, their organized crime activity.

Drug cartels, both formed within the United States and outside our country, have a very effective marketing distribution system which not only earns enormous profits for them and for their constituents, but also has a disturbingly corruptive and corrosive effect upon public officials who have to deal with them. Those are primarily the main organized crime elements with which we work. There are others against which we work. There are other groups patterned after them, ethnic groups of various kinds in various parts of the country.

Senator HATCH. I mentioned the Japanese.

Mr. WEBSTER. The Yakusa. We are not experiencing them heavily yet but we have seen signs of footholds on the west coast and certainly in Hawaii. That's perhaps the largest organized crime group in the world.

Senator HATCH. They are just starting to come into this country and having a real effect; is that correct?

Mr. WEBSTER. That's correct.

Senator HATCH. Well, I guess we could go on and on on this, but I just wanted people to realize that you folks are dealing with dynamite for this modern day and age, but there has been an upsurge in criminal conduct and activity and terrorism in this country that many, many citizens of this country suspect but really don't know the depth of or the extent; is that correct?

Mr. WEBSTER. I think that's correct.

Senator HATCH. About 1 year ago, in New York State, a Brinks armored car was ambushed by a group of terrorists and in the shootout that followed, two law enforcement officers were killed, as you know. Now, I am sure that this is a familiar example, and using this example, could you explain how these revisions might

have helped in avoiding this tragedy and in apprehending the terrorists and killers in this particular case?

Mr. WEBSTER. We have ongoing investigations in these cases and I want to be guarded in trying to make a specific application of the guidelines to these cases, if I may. I don't know nor could I really say with confidence that these guidelines would have helped us find plans for bank robberies before those bank robberies occurred. We had terminated a number of investigations because of inactivity of various groups of which the Brinks participants were members or had been known to be members in the past.

Senator HATCH. These guidelines would have allowed you to continue to monitor those activities and you may have been able to prevent these activities.

Mr. WEBSTER. That's correct. That's a fair statement.

Senator HATCH. But under the Levi guidelines, you were not permitted to do that?

Mr. WEBSTER. That's correct.

Senator HATCH. I think that is a very important—and that would be under the principle that—

Mr. WEBSTER. Another benefit I think is a clear approach to the enterprise. The existing guidelines required us to make separate assessments of every front group or satellite organization that might feed, service, support, or deal or advance the interests of a particular terrorist organization. The May 19th Organization, as an example, is an outgrowth of the Prairie Fire Group which was again a surface group for the Weather Underground. This type of thing would not present us with the same kind of convoluted mental exercise that we have had to go through in the past. We could have investigated clearly the entire enterprise rather than breaking it down into segments as we were previously required to do.

Senator HATCH. Well, this entire enterprise doctrine will help you immeasurably in helping to control international terrorism and other criminal activities.

Mr. JENSEN. Yes; it will. I believe it will.

Senator HATCH. Well, now, we mentioned the Brinks armored car robbery. Is it not true that the individuals later apprehended for these murders have received more than 10,000 pages of FBI records under the Freedom of Information Act, provided by FBI workers working at the taxpayers' expense and, in fact, were they not plaintiffs in a lawsuit to gain more FBI records under the Freedom of Information Act and did the records they received relate to confidential criminal investigations?

Mr. WEBSTER. Senator, I am not sure of those figures. I know that they have had the privilege of seeking that type of information. I know that one of the persons not specifically identified with the robbery but identified in terms of past criminal activity and association, Joanne Chesimard, who is currently a fugitive from justice, escaped from a penitentiary while serving a life sentence for killing a New Jersey State Trooper, had some 2,500 pages of Freedom of Information Act material in her cell at the time of her escape.

Senator HATCH. Well, this is a way the Freedom of Information Act is used by terrorists and organized crime influences in this country; isn't it?

Mr. WEBSTER. It shows their interest in utilizing the Freedom of Information Act for their own purposes.

Senator HATCH. Well, I have used up my time, I had a number of other questions on the Freedom of Information Act of great interest, but I just want to compliment you and the Department of Justice for the efforts that you have made at this time, not to change the Freedom of Information Act to the extent that it would not protect the American people or not allow openness in Government but providing effective reform so that we can at least protect the identity of informants, assisting law enforcement activities against organized crime and terrorism and in security matters; and I believe that we need to continue to work in that area. I am sure my colleagues will have some more questions in those areas; but I just want to again compliment both of you and thank you for your statements here.

Mr. WEBSTER. Thank you.

Mr. JENSEN. Thank you.

Senator DENTON. Thank you, Senator Hatch. Before turning it over to Senator East, I want to assure you gentlemen that I appreciate the tension between effective law enforcement and individual rights guaranteed under the Constitution; I would not want to be accused as one who is in favor of violating the Constitution. The only reason I am in the Senate is to insure that we all continue to enjoy its blessings; and it is the best means by which that can be assured that I am interested in establishing. I am very much for the emphasis on constitutional preservation.

But I do want to say, in all honesty, and I don't know—I think there is a value up here in being candid; I think the changes do represent a loosening of what were overly restrictive guidelines—overly restrictive on the ability of the FBI to carry out its duty to preserve the Constitution—uphold and support it as the Director and the other members are vowed to do.

I am not, in any way, radically in favor of exceptions to constitutional procedure or rights, and I want that to be clearly understood.

Senator East?

Senator EAST. Thank you, Mr. Chairman.

I would just like to make a few observations, Mr. Chairman, to round out my view of what we have done here, and again, the hour is late and time presses in on us, so I shall make this as concise as I can.

First, I agree with the point that you and the Director and Senator Hatch are bringing out, Mr. Chairman, that no one here is engaged in a raiding party upon the U.S. Constitution, nor need this devolve into or degenerate into a breast-beating contest as to who is the best defender of the Constitution. If people want to get in a yelling match about the Constitution, I would contend that the most fundamental civil right or rights that individuals have in civilized government is to be protected in person and property against terrorism, violence. Certainly those are about as fundamental rights as I know. And all we are trying to do is to see that those

are sufficiently protected here by Government through prevention. So I am not condemning the critics of what may be done here. I am simply saying, it would miss the point if it simply degenerates into a yelling contest about who best loves the Constitution.

And also if I might defend the FBI, since it would seem a little unseemly if you did it in public, I think to assume that FBI agents, including the Director and all other people, are chafing at the bit to get at the constitutional rights of the American people in terms of freedom of speech or press or assembly or whatever, I would ask for some facts on that. I don't think that's a fair implication in any of this, that there is any reason to believe you are any less solicitous of other fundamental rights than anyone else is. Why would we imply that you, Judge, are any less solicitous of those than the general public or other professions? I would point to your distinguished record on the bench and as a judge and as a knowledgeable person about the law of this country, and Anglo-American law. So if I might, unless it would appear to be self-serving to you or your agents to do, I don't see any evidence that you gentlemen are any less solicitous of the fundamental rights of Americans than anyone else. So that is a point I would like to clarify to put this thing in perspective.

Second, I think you make a valid point that any guidelines, and I was attempting to make that point, are just that. They are not laws or ultimate standards. It is always assumed any guidelines in the FBI or in the Justice Department are subject to constitutional and statutory requirements. No one is suggesting that Levi guidelines or Webster guidelines or Smith guidelines or anybody else's guidelines are the supreme law of the land. The Constitution still remains the supreme law of the land; in a hierarchy of the law we would have the Congress and the poor paltry Levi guidelines, and maybe in our Smith guidelines or whatever—however else they may be described.

So those who are looking for a story about a great constitutional revolution or a great growing raiding party on the Constitution, I think, are in the wrong room. They will have to go elsewhere to look for that kind of story if that is what they are looking for.

So I wanted just to make those comments to put in perspective what I think you have done and are doing and let it rest at that.

My final observation would be, I want to underscore again, at the risk of saying it ad nauseam, that I hope that what has come out of these hearings as much as any modification of guidelines is the need to deal with an infinitely more important matter, and sometimes this is the value of hearings into the legislative process, and it strikes me that the greater need here, once again, is to get in these other areas, the Federal Tort Claims Act, for example, in order to remove this personal liability of agents because you could have no guidelines and simply say, gentlemen, do whatever instinct tells you to do—which you are not proposing nor am I, nor is anyone else—but the greater inhibition here, the greater limitation, the greater obstacle is this dealing with personal liability. And then there are other matters, too, that Senator Hatch has alluded to.

So I would hope that this is one Senator that will not get preoccupied with the significance of this but move on to perhaps more

fundamental and productive areas for those who really want to insure a more effective FBI. But I would caution, against those who would overdramatize that story, that the Federal Tort Claims Act and any revisions thereto, to protect the personal integrity and liability of agents, will have to be consistent with—no one is suggesting it will not be—with the U.S. Constitution. But once again, I think one can overreach to what is being done here, whether he is a Senator or a Congressman or a member of the press or anybody else. It is a modification and revision of a guideline or guidelines, and they were never the laws of the Medes and the Persians anyway. They were always subject to review and modification in some way, shape or form, so having exhausted the subject as much as we need to in the hearings that we have had here and appreciating the constraints of time that crowd in on us heavily on this Friday afternoon, I shall cease and desist. Again, we thank you and the Director for the orderly way in which these proceedings today and this whole series of hearings have been conducted. I think they have been valuable.

Senator DENTON. Thank you, Senator East. As a constitutional lawyer, your observations are always especially appreciated. There have been very few questions asked, and I won't make any more statements. I will ask some questions.

Judge Webster, what directives, statements of policy or guidance have you issued to your FBI agents concerning the new guidelines?

It is my understanding that you sent out something of that nature last week.

Mr. WEBSTER. Yes, Mr. Chairman, I sent an Airtel to the field on March 17, enclosing the new guidelines and undertaking in a preliminary way to review with the field commanders and legats in other parts of the world the significance of the new guidelines and how to follow them. I wanted them to realize that we were charting some new waters that we would want them to be careful not to assume that we were indicating authority beyond the level of the guidelines themselves; that we wanted to follow these closely and in addition to this advice on March 17, 1983, I have made plans for seminars to be conducted in the month of April in four different locations around the country with representatives from each of our 59 field offices, to be sure that they have been properly instructed and that there is going to be a consistent performance under the guideline throughout the country.

Senator DENTON. Thank you, sir.

Would you kindly furnish the subcommittee a copy of the Airtel?

Mr. WEBSTER. Certainly. Be happy to, Mr. Chairman.

[The document was received for the record and is found as exhibit E, beginning on p. 80 in the appendix.]

Senator DENTON. This is a long shot, perhaps, but in the 4 days since the effective date of the new guidelines have you opened any inquiries or investigations on groups that you believe could not have been investigated under the Levi guidelines and, if so, could you identify the groups?

Mr. WEBSTER. Well, I can answer the question that within the past week we have been—as the Senator may not know, I just returned from a 4-day annual conference with our field commanders and have not been advised of—since I returned—of any new inves-

tigations; but I am aware of one that was opened on a full-field basis last week. That could have been in my opinion opened under the previous guidelines, but because of lack of clarity, it was not opened.

Senator DENTON. You couldn't identify what that one was?

Mr. WEBSTER. Well, I would prefer to supply that information privately to the committee.

Senator DENTON. Have you come up with any other definitions? We have had problems with semantics and with substance on the definitions "domestic security/terrorism" and "international terrorism" as used in the new guidelines. Could you cast any light on that?

Mr. WEBSTER. Well, I don't think there is any significant change in the method of investigation, Mr. Chairman, those terrorist organizations which are under the control of a foreign power or who act extraterritorially are investigated under our foreign counterintelligence guidelines.

Senator DENTON. Excuse me, sir. I just asked if the definitions of the terms "domestic security/terrorism" and "international terrorism" have been changed at all. I didn't ask whether there was any change in the investigative techniques and so forth.

Mr. WEBSTER. I think perhaps there may be some minor change in verbiage, but I think the reach is the same, the reach; the reach is those who are engaging in criminal activity in violation of Federal law involving violence and that is, we are talking about domestic terrorism. Now, if you are talking about investigations of domestic terrorism, then the standard does not require that they have committed those activities but that the reasonable indication is that they have been, are, or will be engaging in those activities in violation of Federal law.

Mr. JENSEN. Mr. Chairman, if I may make one comment on that, it is that there has been a change in its concept insofar as it moves to the enterprise concept.

Senator DENTON. Yes.

Mr. JENSEN. When we discuss a domestic security investigation now, we use the description of an enterprise concept. We describe it further as an organization with a purpose to achieve political or social change through activities that involve force or violence and then put that within the enterprise concept.

Senator DENTON. Yes, sir, I understand.

You have a major subdivision in the guidelines entitled "Domestic Security/Terrorism Investigations," and for purposes of precision in our own work in this, we just wonder if you have a definition for the term "domestic security." Is there an official definition or is that just a general term that we are casting about? Is it interchangeable with terrorism, for example?

Mr. JENSEN. Essentially it will be—one could look at it whether or not terrorism itself has a changeable kind of definition. We are really looking at any organization or enterprise which fits within the definition and, as you say, that is within the structure of the guidelines. They simply define it in terms of the goal of the enterprise. Beyond that we may also define it in the more traditional terms of terrorism.

Mr. WEBSTER. Sir, I may have inadvertently been responsible for such confusion, although I don't apologize for it because in the early stages of our domestic security program, the Congress was less than generous with resources and tended to want to limit our activity in this area, more out of apprehension that we were off on a horseback ride against first amendment organizations and again and again wanted to stress the fact we were not talking about dissidents and school boards; we were talking about terrorists; those who engage in violent activity against our society. And so I changed the name of our program to a terrorism program to make clear as best I could that this—we were not reverting to any of the expansive activity that had taken place in the past under a different set of circumstances, a different climate. We were focusing on terrorists.

However, there are many statutes that refer—and enabling legislation and budgetary provisions that refer to domestic security.

I think for our purposes they are interchangeable.

Senator DENTON. Well, terrorism would seem to be too narrow a way to define that which is a threat to our domestic security; in other words, there are aspects of operations of organizations which do not involve terrorism but include such things as disinformation, denying others their constitutional rights by means other than shooting them; just sort of shouting them down as we had in the last month or so with respect to our Ambassador to the United Nations on two occasions and with respect to a gentleman who used to be a Black Panther and now is not. He was not permitted to speak at a university by those who shouted him down. I was on the Phil Donahue Show day before yesterday with people shouting at me from both sides in unison as if having been instructed by someone to say such things as: Shut up; America is no good—and they finally succeeded in effecting what they wanted. I managed to lose my cool for a few seconds.

But that sort of thing, you know, should work both ways. I would think if we would lean over backward in one direction to protect the rights of those who for some reason or another seem to hate and be willing to advocate the violent overthrow of the Government, that those who have reason to—motivation to use their free speech to defend this country, its traditions and values, and so forth, and even its institutions, should be permitted the same opportunity. They can be denied by, you know, blowing up their automobiles, killing them; but they can also be denied by other means, and I just wondered whether domestic security doesn't involve something other than terroristic violence.

Mr. WEBSTER. I don't know whether Mr. Jensen wants to comment on that detail. From an operational point of view, we view these guidelines as predicating a terrorist intelligence investigation upon the use of violence; that is, violence is one of the key ingredients. There are other ways to investigate activities by individuals and organizations under our general crimes statutes if they are in fact violating other kinds of Federal laws that do not involve violence. If we are talking about hostile intelligence activities which involve disinformation and active measures, we have foreign counterintelligence guidelines that are different from these and permit separate and independent investigations.

But I do view the intelligence base that we are authorized to gather here as fundamentally associated with those activities in violation of Federal law which involve the use of violence.

Mr. JENSEN. Mr. Chairman, I would simply add, and echo what the Director has said, that there are other investigative activities that may be called for, but they are all within these guidelines. One of the purposes was to put this in a framework where all of the investigative activity of the FBI would be in a single document that would provide clarification to investigators so that they can use this to move into the different levels of investigation or the different types of investigations that may be called for.

Senator DENTON. I would like either of you from here on, as you are doing, to comment as you care to.

Please explain in what way the new guidelines will impact on the FBI's use of informants in domestic security investigations. What is the FBI's ability to infiltrate or penetrate domestic groups. I realize this is covered rather specifically in the modifications, but would you explain them in your words.

Mr. WEBSTER. The informant is a more inclusive technique than simply running a record check on someone. Our general principles for all investigations are to use the least intrusive techniques necessary to complete our investigation under the particular circumstances in which we are working.

In terrorist activity, the use of the informant becomes an extremely useful and important tool in developing inside information as to what types of violence and criminal activity are being planned. For that reason, we do use the informant; the guidelines do authorize the use of informants. The probable cause standard is not currently required by any statute and we would not expect that we would be required to look to that standard in order to use it, as we have never done in the past in organized crime or any other kind of criminal activity.

At the same time, we recognize that when an organization ceases to be active, goes dormant, as they will do from time to time, it will be very difficult for us to reestablish an informant base on short notice when they suddenly surface again in some form of activity. For that reason, the new guidelines do permit us a low-level monitoring approach. We are now required to close out investigations and file away our informants. These organizations, as tight and cellular as they are, are not like some of the old organizations in the past; we can't pull an informant off the shelf and say go in there in 24 hours and have the information. So it does protect the investment that we have without necessarily utilizing it in any way other than a capacity to produce information when activity begins to redevelop.

Mr. JENSEN. I may say, Mr. Chairman, in this regard that sometimes we may be confused in a sense in that these guidelines are not the only guidelines that apply to investigative techniques, particularly when you look at something like the use of informants. That, as the Director has pointed out, is an intrusive technique.

We make reference to other guidelines and other policies of the Department, and they are not changed in any way by these guidelines. We use these guidelines simply to make reference to all the rest of the departmental policy.

Senator DENTON. Well, it strikes me as an improvement in that the continued use of the informants after the dormancy of the violence is authorized.

Mr. Jensen, you mentioned in your opening statement that the criminal enterprise approach enables the FBI to deal more effectively with groups which knowingly support the criminal objectives of a violent group. You cite as an example people who are knowingly providing safe houses or financing the criminal activities of a terrorist group and you state they would be investigated as part of the same criminal enterprise or that they could be.

Will this criminal enterprise approach also allow the FBI to investigate a lawyer or lawyers who go beyond providing legal counsel and representation to such groups and actually use the appearance of a lawyer-client relationship to assist in the terrorist activity or to assist the terrorists to evade the law?

Mr. JENSEN. As you pointed out, what the guidelines will cover is any investigative activity, or the use of an investigative technique concerning conduct that would fall within the whole range of enterprise support. If the conduct is criminal, it will fall within the ability to investigate. There have been situations in the past where lawyers have provided weapons, for example, and those kinds of circumstances surely would fall within the investigative parameters of these guidelines.

Senator DENTON. If this lawyer is a member of a chapter of a national organization, such as the National Lawyer's Guild, will the FBI be able to investigate that chapter of the National Lawyer's Guild?

Mr. JENSEN. We obviously can't get into the area of advisory opinions, and it is hard to say what the premises are. I would prefer to say, that you have to consider this issue in terms of individual conduct rather than the definition you put forward.

Senator DENTON. If the FBI can investigate a chapter—if they can investigate a chapter of a national organization by your judgment in these premises, will it then be able to investigate the national organization or at least open an inquiry into the activities of the national organization? I am talking here in terms of the cross relationship which appears to be approached by this modification.

Mr. JENSEN. I am going to answer very generally. My understanding is that not much changes here except to develop the enterprise concept. We cannot shoehorn ourselves into an investigation of an national organization because down at some low level one of its members is engaging in terrorist activities or terrorist conspiracy activities—

Senator DENTON. Correct me if I am mistaken, but I believe the wording says two or more.

Mr. JENSEN. Yes. I am using two or more if two or more are involved. There are certain organizations which we watch very closely to see if they have any kind of operational influence, control, or direction over segments or branches of their membership, some of which appear clearly to meet our guidelines and which are being investigated under the guidelines and others which do not appear to meet those guidelines and are correspondingly not investigated.

Senator DENTON. Thank you, sir.

Through classified channels the subcommittee has learned that some of the groups advocating a nuclear freeze are either identified as Soviet-controlled fronts or have a significant number of Communists included in their memberships.

Would this be appropriate for FBI investigation or inquiry and, if so, under which guideline? I realize some would be under foreign counterintelligence.

Mr. WEBSTER. Our approach to these questions has been guided by the foreign counterintelligence guidelines in which we follow efforts of hostile intelligence agents to influence American institutions, and so we use in matters of this kind the foreign counterintelligence guidelines. And I might say that we are not investigating the organizations; we are investigating those who are attempting to influence the organizations.

Senator DENTON. This next question refers to the constitutional and statutory predicates for your internal security jurisdiction.

Article IV, section 4 of the U.S. Constitution provides that:

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

Then, section 1005 of title 8, United States Code, sets forth the provisions of the Immigration and Nationality Act, including responsibility of the Director of the FBI to provide information to the head of the Bureau of Consular Affairs and to the Director of the Immigration Service relating to the internal security of the United States.

Since the guidelines do not appear to provide for the collection of intelligence on domestic subversive groups having no criminal nexus, how does the Bureau fulfill its responsibilities under the Constitution of the United States and under the Immigration and Naturalization Act?

Mr. WEBSTER. That's a tall question, Mr. Chairman. I might need to answer it on the record; we should. I fully understood the reach of it.

Senator DENTON. If you could just briefly summarize, then, that would be fine.

Mr. WEBSTER. I am afraid to hazard that.

Mr. JENSEN. I share the Director's perspective on this. I think we would basically have to answer that these guidelines will be directed at criminal activities. To the extent that you are suggesting there are other responsibilities of the FBI, they will be dealt with, and the authority for their activities will be without this particular set of guidelines. This deals with criminal activities, criminal investigations, and potential criminal conduct. Other activities of the Bureau, such as providing information or making investigations, are dealt with separately.

Senator DENTON. So, those acts that would attack the domestic security in other than violent means per se appear to be sort of a blank spot?

Mr. JENSEN. I would think that that definition would by necessity include the criminal definitions that are within. There is a general description of the criminal activities that would be covered by the Federal—

Senator DENTON. Judge Webster, in late 1976, the Intelligence Division of the FBI was split and the domestic terrorism investigations were placed in Division 6, the CID Criminal Investigative Division, while transnational terrorism and foreign counterintelligence remained in Division 5, the Intelligence Division.

What happened to the jurisdiction for domestic subversives whose foreign connections were tenuous and were not always terrorist, like the National Lawyer's Guild, the Socialist Workers Party, the Progressive Labor Party, the National Socialist White People's Party.

Mr. WEBSTER. In point of fact, Mr. Chairman, both international terrorism and domestic terrorism have been managed by Division 6, the Criminal Investigative Division, and I believe since 1976, certainly during the 5 years I have been in office, the split was in the budgetary allocation and, as a matter of fact, I am in the process of making some recommendations to put the budgetary funds where the activity is taking place. But it all functions out the Criminal Investigative Division, but under the appropriate guidelines, Domestic Security or Foreign Counterintelligence.

Senator DENTON. If foreign counterintelligence was under 5 and terrorism was under 6, what happened to foreign agents who were not terrorists, or subversives who were not terrorists?

Mr. WEBSTER. Well, the word "subversive" is one that we don't see very often in the Bureau any more because of its difficulty in defining. One man's subversive is another man's freedom fighter. And we would prefer to make our judgments in allocating resources on the basis of conduct or activity.

Senator DENTON. Will the FBI now be able to monitor and/or investigate radical or Communist political groups and collect information on their membership's finances, goals, and future plans?

Mr. WEBSTER. The FBI is currently able to investigate any organization that is dominated by a foreign power or an agency of a foreign power under a foreign intelligence guideline such as the case with the Communist Party USA. I make that statement although we do not normally acknowledge those organizations under investigation. Those guidelines have just been so widely known and acknowledged by the Department of Justice.

We are currently able to investigate those domestic organizations for which there is the threshold predicate, a reasonable indication that they are planning conduct against our social or political institutions which involves a violation of Federal law and the use of violence.

I guess the fair answer to your question is that unless we can tie it to one of those two predicates, we would not be investigating ideas which appear to be inimical to the judgment caller's distasteful or unpopular ideas. They must be associated with one of those two principles that I have described. I think maybe Mr. Jensen might have something to add to that.

Mr. JENSEN. I think the point is that investigation of any organization such as you have described would be carried out if, as the Director points out, it has a predicate which would permit a foreign counterintelligence investigation. If it didn't fit within that type of category, it would have to fit within the guidelines we are now discussing. It would have to fit in terms of, for example, a spe-

cific criminal act of a specific individual, whether two or more, in a criminal enterprise and a reasonable indication that crime exists; it would then fall within the ability to investigate under these guidelines.

Senator DENTON. Judge Webster has stated that the Levi guidelines forced the FBI to concentrate on conduct rather than ideology, to emphasize activities of the various groups under investigation in the domestic security area. Under the new guidelines, can the FBI now investigate and monitor a group based on its ideology or stated objective of subversion, violence, or terrorism?

Mr. WEBSTER. If those objectives are stated and stated under circumstances that we cannot say there is no possibility of harm, then my understanding of the guidelines is that we are entitled to conduct an inquiry to see what is behind it and on the basis of that to go forward with a full field investigation if we make the reasonable indication standard that is required for a full field investigation.

Senator DENTON. And the question did include the words "stated objective."

Mr. WEBSTER. Yes.

Senator DENTON. Could you provide us with the FBI guidance to its agents on the difference between mere rhetoric and advocacy, indicating where the FBI tends to draw that line?

Mr. WEBSTER. Well, the advice that I have given in the March 17 Airtel is as follows:

The point to remember with respect to implementation of the advocacy provision is that the basis for initiating an inquiry or investigation is not the advocacy itself but rather than the statement of advocacy taken in context presents a credible threat of crime. To the extent possible, all such matters should be resolved through preliminary inquiries. During the implementation stage of these guidelines, any further inquiries based on statements of advocacy should be reported promptly to FBI Headquarters, Terrorism Section, for review.

I know at various times in hearings we have said mere advocacy or rhetoric. We are going to have to deal with some closer questions, because groups tend to play against our announced positions on certain issues and I want to be careful that we don't make it more difficult for ourselves to carry out our mission.

But the kinds of things that are said occasionally are susceptible to two interpretations. One I suspect is the intended interpretation and the other one, what they say to object to any type of investigation of what has been said. So those are going to be closer questions. Take them out. Take them down. Language of that kind can be mere rhetoric and it can also be advocacy of violence. And so you have to look at the full ambiance of the scene in which this verbalization or advocacy is taking place to determine what is the nature of the advocacy. Is it advocacy of further political lawful dissent or is it advocacy intended to lead to what is prohibited by law.

Mr. JENSEN. The only thing I would add, Mr. Chairman, is that the guidelines point out that when any consideration of this nature is undertaken, it must be done in context. You can take the same statement and put it into one context, and it is not only mere advocacy, it is a crime itself, incitement to riot. You have to look at the context, and as the Director points out, that is what is contemplated.

Senator DENTON. There are so many incidents like this that I realize it is difficult to draw distinctions and some people say things they don't mean, but it is impossible to let things like this continue to go by and grow.

In the Wednesday, March 23, 1983, Washington Times, there is a report that Eldridge Cleaver, former leader of the Black Panther Party, was shouted down at Howard University when he renounced his former revolutionary philosophy and said that the 5 years which he spent in exile in the Communist world made him realize the violence and inequity of the Marxist system.

According to the article, the strongest outcry came after Cleaver called upon students to think of themselves as Americans whose future is involved with America. One student reportedly yelled, "We don't need America, and one day American won't exist."

I've had many hours of conversations with Eldridge Cleaver, I respect his sincerity. Do you think it is appropriate for the Bureau, based on this incident, to attempt to identify the individual or individuals who shouted him down, or particularly the individual who made that statement and if not, why not.

Mr. JENSEN. I may quickly say that once again, as we get into specific incidents with specific descriptions, it is very difficult for us to give an answer; in effect, we would be giving an advisory opinion, which we really can't do, I don't believe, we can really get into a finite kind of statement like that. Once again, you have to go back to the context; you have to go back to see whether or not you are dealing with a context that would lead to criminal conduct. I don't think that the description that is there would provide a sufficient base upon which to answer.

Senator DENTON. I do believe there is a context which we can identify.

In the case of the violence associated with the planned Ku Klux march on the 27th of November, I remember a very sincere looking black lady on television who said, we didn't want violence; it was the Communists who wanted the violence. I think there is a conflict. I've seen it when I have had to speak, and I have had no trouble with college students. At Washington and Lee when I was warned not to wear my uniform in 1974 and not to speak about four subjects, three of which I can remember, dope, sex and Vietnam, warned not to wear my uniform on the stage to address them, I spoke only about those four subjects, I forgot the fourth, and when the speech was over, we had the 45 minutes of question and answers and Justice Lewis Powell's son raised his hand, who was in charge, and said, "Thank you, Admiral, it's been a fine occasion," the students wouldn't let me out of there. They kept me there until 3:15 in the morning in Lee Chapel, and not one of those students disagreed with what I said. They had heard Jane Fonda, Thomas Hayden and others before me and then had stormed and tomatoed the last person, three people 3 months previous who had appeared in uniform.

I think we ought to call a spade a spade and say we have a context. I am not saying it is necessarily always criminal, but I do believe that we have a rising tide of underappreciation for what this system is. On the Donahue Show a young man stood up and said, the military is the most rotten institution in this country; they are

only trying to justify their own profession and they are trying to get us into a nuclear war. I don't think the young man ought to be investigated, but I believe there is a context of development which is threatening our security, whether it comes from harmless or harmful sources, and we do have the knowledge, that such developments have been made top priority under Andropov, as part of KGB active measures.

I would not ascribe to any American undue influence from the Soviet effort. But I think if we fail to identify the fact that there is a major effort in that direction by the enemies of this country, we are making an error.

The following statements are being made by a 23-year-old unnamed white male American to a Washington, D.C., college political group of which he is not a member. For each statement, please indicate whether under the Smith guidelines the FBI can make a preliminary inquiry or investigation. Again, if you think the context is evident enough, OK. But we are trying to come down the scale and see what the answer would be.

The first statement was, "We must get President Reagan out of the White House." Now, I can assume the answer would be no.

The second statement is, "One way or another we must get President Reagan out of the White House." I can still say for you the answer is no.

The third statement he made was, "One way or another we must get President Reagan out of the White House and the method is irrelevant," the fourth, "One way or another, Reagan must be removed from the White House and the possibility of violence to accomplish this purpose should not be rejected out of hand." May I pause there and ask, is that beginning to get into some kind of an area where you might think about whether the gentleman should be investigated?

Mr. JENSEN. Absolutely. That is a general description of a continuum of statements—and still, the statements themselves have got to be considered in context. I guess that is really where we come—

Senator DENTON. That is why I am delivering these. This is the context and the order in which he delivered the statements. I will skip the next one, and the next thing he says, "One way or another, that SOB Reagan should be removed from office by violent means if necessary." And, next, "One way or another, you must get Reagan out of the way, and the method or tactics will be justified by the results. Violence has always gone hand in hand with progressive revolution." Finally, the student says, "And to show my commitment to the people's revolution, I will take care of Reagan myself; I will kill Reagan." Now, the last one, I would say, there is no question about. I am just trying to get some idea where you are on that spectrum.

Mr. JENSEN. Certainly what you have done is go the spectrum from one point to another, and when you get to the point where we are talking about specific threats to kill, obviously, no one, I would think, would say that that kind of advocacy is not subject to an inquiry at least.

Senator DENTON. But where you have the statement advocating the violence, get him out of there, and a lot of them shouting him

on, you know, encouraging him on, I would think you have got something you have to look into, as a postulation anyway.

Mr. JENSEN. As a postulation. Previously, there was no statement whatsoever in the Levi guidelines about the concept of advocacy. There is an attempt to look at this and say that we do not take a position that you cannot use verbal conduct as the premise for an inquiry or even under some circumstances for an investigation. I think what we are simply saying is that, as you have pointed out, there is a continuum of activity when you put it in context, it could be the basis for either inquiry or investigation.

Senator DENTON. Well, if the FBI came across that, would you at least refer it to the Secret Service?

Mr. WEBSTER. Absolutely, and I expect the Secret Service's interest would have been piqued very early in that litany which you gave us, Mr. Chairman.

Senator DENTON. This question is addressed at the two-or-more stipulation.

Under the new guidelines which are based on the criminal enterprise concept, how are individuals going to be targeted, monitored and investigated who are not part of the criminal enterprise such as a Manchurian Candidate or Carlos, that is independent guys who are sophisticated and seemingly self-sufficient?

Mr. WEBSTER. Well, as Mr. Jensen pointed out earlier, these are a collection of guidelines and it is very possible that an investigation could be conducted under the general crimes section as to individuals. It has been our experience that for purposes of developing domestic security intelligence, you are talking about enterprises of two or more people and that's why the guideline was phrased in this way.

Senator DENTON. Under the previous guidelines, investigations of "rank and file members" of violent, subversive or terrorist organizations were discontinued. This seems curious since many times, especially with Communist-controlled or influenced groups or, in front groups, the real leaders are not those filling ostensible positions of leadership. They are carefully mingled in with the general membership. Therefore, it seems to me that unless all members of the targeted group are subject to investigation, you would stand less chance of identifying the true leadership.

What is a "rank and file" member and how he is distinguished or separated from key members or leaders of the group? Is a lack of resources a reason for discontinuing such investigations? I realize you are overstretched.

Mr. JENSEN. I think that the Director made this point before, that under these guidelines you can approach it from an enterprise basis and there is no artificiality in terms of the justification for a specific investigation. In addition to that, I think the point ought to be made that these guidelines are set up in such a fashion that they don't depend on any definition of an organization or any specific organizational structure; we recognize the fact that there are different types of structures, and, as you pointed out, these are fluid in their present state. Whether or not we give someone a hierarchical position within an organization is really not important. It is whether or not it fits within the overall enterprise.

Senator DENTON. Judge Webster, you have stated in previous hearings that much domestic intelligence under the old guidelines was collected as a byproduct of other investigations such as general criminal and RICO investigations. This, I imagine, compensated to some extent for the lack of information caused by the overly restrictive nature of the Levi guidelines. What was done with this byproduct?

Mr. WEBSTER. Well, you are touching closely, although I don't think it is the thrust of your question, but you are coming so close to it that I think that it might be appropriate to mention, that we are subject to the restraints of the Privacy Act, which is not generally recognized in its import on law enforcement. The act circumscribes what kind of information we can collect and index in our files, and one of the clear provisions of the Privacy Act is that we can't collect anything that isn't pertinent to an ongoing law enforcement objective. And so in the past there have been some laments from other agencies that they were not getting the kinds of varietal information that they had enjoyed in the past, and one of the reasons is the limitations on what we can collect for dissemination or collect for retention in our own files.

As other information is developed in legitimate investigations, racketeering, and otherwise and other organizations that we see, associations, for example, between gun traffickers and drug dealers, and those who are supplying weapons to terrorist organizations, all that can be collated in our files and made available for our domestic intelligence base.

Senator DENTON. Judge Webster, during a June 24, 1982, hearing, you said that there is still individual lack of enthusiasm for initiating investigations under domestic security. I think, as I recall, that that was related to the need for amendment to the Federal Tort Claims Act.

Mr. WEBSTER. That's right, Mr. Chairman.

Senator DENTON. What steps have you taken to address this problem?

Mr. WEBSTER. In terms of seeking additional legislation or in terms of internal—

Senator DENTON. Internally.

Mr. WEBSTER [continuing]. Internal activities. Well, of course, these new guidelines are just off the printing press. I have sent the initial instructions dated March 17; we are providing these seminars in April; I will be making a number of statements to the field; I addressed the special agents in charge, all of our field commanders this week at our—in a conference assembled; and I would expect that they will when they have been properly indoctrinated in the provisions of the guidelines have considerable more confidence in their ability and capacity and the need to utilize these investigations where they are appropriate under the guidelines.

Senator DENTON. I only have one more question, then I have statements I will read for the record from Senator Leahy and one from Senator Biden.

This subcommittee during the course of its hearings received alarming testimony from the Secret Service, the Park Police and municipal law enforcement agencies as to the adverse impact the Levi guidelines had on their ability to gather and/or receive infor-

mation on groups or individuals that posed a threat to our national security.

Were any of these agencies asked by the Department of Justice or by the FBI for their suggestions, recommendations or input prior to modifying the domestic security guidelines? If so, when? If not, why not, in view of the direct impact these guidelines have on their ability to carry out their assigned responsibilities?

Mr. WEBSTER. We have had ongoing discussions with the Secret Service as to what kinds of information that we have that the Secret Service would like to receive. This was renewed, I know, following the shooting of President Reagan, and we are well aware of the Secret Service's concerns about a shrinking data base which they enjoy for their particular purpose, which is protection of a list of protectees, about 20, I believe. And other organizations have expressed—other law enforcement agencies have noticed the drying up of as they call it of certain kinds of information.

I think they have to realize, Mr. Chairman, that we went from several thousand investigations a decade ago to less than a hundred under the guidelines and under the prevailing conditions that we found them. Much of what we were collecting was of almost no value to the Bureau but might have been of value of one kind or another to agencies with specific missions other than law enforcement. I notice that in March 1976 we had 4,868 cases, and in December 1972 we had 73 cases, which was a jump over the year before, in which we had 26 cases.

Naturally, when you are more selective in your investigations, you are going to be collecting less information and I don't think any of us have ever actually analyzed in any scientific way the difference in the quality of the information which we are furnishing under present guidelines versus the quantity which we know is considerably less than we used to provide.

I don't know that any of the other agencies ever articulated specific things that they thought were impeding progress, just that they weren't getting as much information as they had before.

Mr. JENSEN. I think that that is the correct situation. Their perception was that perhaps there was not as much information being gathered, and they said that you approach that in two ways. In the guidelines we have already made the point in general terms that to the extent there was some perception that you could not gather information as public information, that hasn't been made clear. There was no statement about that in the Levi guidelines. In this particular statement it says that you may do so within the limits of the Privacy Act. In effect what you are saying is, gather that information which is lawful and then, at the other end of the spectrum, we will provide for maximum dissemination of that information to every law enforcement agency. At one end of the spectrum, we gather all the information that we can; to the extent that had been hindered before, we wish to remove those hindrances, but at the other end of the spectrum, we provide for maximum dissemination.

Senator DENTON. Could you state, Director Webster, which sections, by division, within the FBI, participated in the formulation of the FBI's recommendations to the Department of Justice concerning modifications to the Levi guidelines?

Mr. WEBSTER. Well, of course, the Criminal Investigative Division, Division No. 6, participated; our Legal Counsel Division participated; Inspector, Special Assistant to the Director was one of the active draftsmen in working with the Department on these issues——

Senator DENTON. What was his name, sir?

Mr. WEBSTER. John Hotis.

I have been privy to the various drafts as they have worked their way back and forth between the Bureau and the Department and then for the last 8 months I think it is important to note that this was a departmental effort rather than a Bureau effort, and we had identified the problems, made suggestions as to how the guidelines could be improved, and from there the Attorney General's special assistant and others in the Department, including Assistant Attorney General Lowell Jensen, participated in the formulation of the final language which you have before you.

Senator DENTON. Were the field agents involved in input?

Mr. WEBSTER. Yes; they were. Field agents were consulted at various times. I don't have the exact information on that here, but I could supply it for the record, but very definitely we have consulted with the field on these matters, as we normally do when we are approaching a new initiative or a new set of rules.

Senator DENTON. Presumably that was well in advance of the effort to issue these guidelines. I mean, it wasn't something that happened——

Mr. WEBSTER. Yes. That's correct, Mr. Chairman.

Senator DENTON. Could you identify the sections and offices and bureaus within the Department of Justice which actively participated in the review and modification of the guidelines?

Mr. JENSEN. As the Director said, there was departmental participation. It involved those agents within the Department, the Attorney General's Office, the Assistant to the Attorney General, the Deputy's office, the Associate's office, the Office of Legal Counsel, the Office of Intelligence Policy Review, and the Criminal Division; they would be the chief participants, with some reference to U.S. attorneys.

Senator DENTON. Did the internal security section of the Criminal Division participate?

Mr. Jensen, Yes, Mr. Chairman.

Senator DENTON. Was that from the beginning or recently?

Mr. JENSEN. The Criminal Division was involved in the developmental process all the way through in the several sections and offices within the Criminal Division, and one of the primary ones is the internal security section in this particular effort.

Senator DENTON. For the record, on March 2 and March 7, 1983, Senator Leahy sent letters to Attorney General Smith and Judge Webster concerning the new guidelines on general crime, racketeering enterprise, and domestic security terrorism investigations. He is still awaiting their response to his correspondence and Senator Leahy asks that his letters and any forthcoming response be included in the record of this hearing. If you do not have it at this hearing, then we would like to receive it.

Mr. WEBSTER. It will be forthcoming, Mr. Chairman, I have seen the draft responses and they were being typed for presentation. I

was at the National Academy graduation at Quantico this morning and did not have a chance to sign the final letters, but they have been prepared and will be delivered.

[Senator Leahy's letters and the Department response are found as exhibit F, beginning on p. 84 in the appendix.]

Senator DENTON. Thank you, sir.

[The prepared statements of Mr. Jensen and Director Webster follow:]

PREPARED STATEMENT OF D. LOWELL JENSEN
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Chairman Denton, Members of the Subcommittee, I am pleased to appear today with FBI Director Webster to discuss with you the Attorney General's revised Guidelines governing FBI Domestic Security/Terrorism Investigations. I am aware that you have already received copies of the Guidelines--which went into effect on Monday, March 21--and Department of Justice officials in recent weeks have had the very helpful opportunity to discuss questions concerning the Guidelines with some of you and with your staffs. Accordingly, Director Webster and I are prepared to continue this dialogue by spending most of our time here today responding to your questions or concerns. First, however, I would like briefly to describe for you the results of our review and revision process and our reasons for undertaking this effort.

I am very pleased with the results of our efforts. The guidelines will continue to do what they were designed to do: protect the constitutional rights of law-abiding citizens while ensuring that the FBI can effectively conduct those investigations which are necessary to protect our citizens from terrorists and other criminals.

A principal goal of the Attorney General in approving these revisions has been to acknowledge that investigation of groups which engage in criminal violence for political or racist purposes is a critical component of FBI law enforcement activities. Domestic security/terrorism investigations should not be the subject of entirely separate regulations; hence, these revisions integrate guidelines governing investigation of terrorist enterprises with the guidelines which since 1980 have governed criminal investigations of individuals and racketeering enterprises operating for profit. At this time, substantive changes have only been made in the Domestic Security/Terrorism portion of these combined Guidelines.

A number of factors have prompted these revisions. We have had seven years' operational experience with the 1976 Attorney General's Guidelines on Domestic Security Investigations. As

some of you will recall, the 1976 Guidelines were the first of their kind, and were promulgated on a "trial" basis. Since 1976, we have also had experience with other more recently promulgated guidelines, particularly including the Attorney General's combined Guidelines on General Crimes Investigations and Investigations of Racketeering Enterprises. Moreover, we have found that the FBI today is confronted with a wider variety of terrorist organizations, with more fluid membership structures, than was the case several years ago.

This seven years' experience with the former guidelines has been carefully reflected in the current revisions. The Guideline revisions resulted from an extensive eight-month review process overseen by the Attorney General and involving much of the Department of Justice leadership, including Director Webster and myself.

After that review process, the Attorney General concluded that guidelines do serve important functions and that the 1976 Guidelines were an extremely good effort, but that some revisions of those standards were necessary to respond to current law enforcement circumstances and to clarify certain ambiguities identified by Director Webster and his field personnel. The integration of all FBI law enforcement investigation guidelines into one document, in our view, will provide this clarification for our field agents and will also enhance the effectiveness of our terrorism investigations by applying to these investigations the concepts and standards which have effectively governed our racketeering enterprise investigations in recent years.

Let me outline some of the principal features of the revisions which will be of interest to this Subcommittee:

(1) The "criminal enterprise" approach. Application of the criminal enterprise approach used in organized crime investigations allows the FBI to cross organizational lines in a domestic security/terrorism investigation without regard to what a particular group or element in an organization might call itself. This enables the FBI to deal more effectively with groups which knowingly support the criminal objectives of a violent group. If, for example, persons are knowingly

providing safehouses or financing the criminal activities of a terrorist group, they would be investigated as part of the same criminal enterprise. This avoids the necessity of opening a separate investigation of the supporting group, with a separate justification. The new approach recognizes that terrorist groups today have a fluid membership and often lack organizational structure, yet function as a single enterprise directed toward a common goal. This approach will also permit the FBI to focus upon violent factions of a larger organization without having to place the whole organization under investigation.

(2) Levels of investigation. The new approach authorizes a single level of investigation for domestic security/terrorism investigations: a criminal intelligence investigation. This permits the full range of investigative techniques when an investigation is begun, although Fourth Amendment techniques such as electronic surveillance, still require the usual "probable cause" showing. Inquiries short of a full investigation would be conducted under General Crimes authority, and would be used to determine whether leads indicating specific criminal activity warrant full investigation. This approach not only eliminates the complexity of the current three levels of investigative authority--imposing differing standards and restricting the use of techniques at different levels--but also draws a sharper distinction between inquiries related to specific criminal conduct and intelligence investigations focused on an entire enterprise.

(3) Standard for a domestic security/terrorism investigation. An investigation can be conducted when the "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States."

This "reasonable indication" threshold to initiate an investigation does not require that a crime be completed or be "imminent", and has worked well in practice in FBI general crime and racketeering investigations. The standard does not require "probable cause" and is satisfied if the circumstances indicate that the group is engaged in activities that will

involve force or violence in violation of federal law now or in the future.

(4) The advocacy issue. There has been some confusion in the past about whether advocacy of crime can provide the basis for an intelligence investigation. This uncertainty stems in part from understandable First Amendment concerns and the silence of the 1976 Guidelines on this subject. The new draft makes it clear that statements of intent to commit a crime are not immune from investigation. When statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an inquiry or investigation may be warranted. If it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm, then further inquiry would not be authorized.

Normally, these matters can be checked out in the context of a preliminary inquiry, and lawful political dissent will be no more subject to investigation than under the 1976 standards. However, it must be made clear to our agents that when words credibly indicate that criminal violence may follow, our responsibility to protect the public calls for reasonable further inquiry.

(5) Publicly available information. The guidelines explicitly authorize the FBI to collect publicly available information to the full extent permitted by the Privacy Act of 1974. We are currently studying the provisions of the Privacy Act, which have not yet been definitively construed, to determine the full scope of FBI authority in this area.

(6) Continued monitoring of enterprises warranting investigation. Under the old guidelines, there was a troubling tendency to close investigations and terminate informant coverage when the violent activity of the group had been dormant for a period of time. If the organization became active again, it was often a difficult and time-consuming process to redevelop effective informant coverage. The new guidelines would permit the FBI to monitor organizations which may be temporarily inactive, but whose prior record or stated objectives indicate

a need for continuing federal interest, so long as the minimum standard for investigation is satisfied.

These Guidelines also expressly authorize cooperation with the Secret Service on matters of investigative interest to that agency and contain provisions permitting dissemination of investigative information to other agencies for lawful purposes.

We will be watching carefully the results of these Guideline revisions in practice. They are not immune from further revision based upon practical experience, and the Attorney General welcomes your comments as we observe the results of implementation. In my view, these changes effectively achieve both strong law enforcement and the safeguarding of individual rights, and I am pleased to have been a part of this process.

Now, we would be happy to entertain questions the Subcommittee may have for me or for Director Webster, whose staff played a critical role in preparing these revisions and who will oversee their practical implementation.

PREPARED STATEMENT OF WILLIAM D. WEBSTER
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

THANK YOU, MR. CHAIRMAN. MR. JENSEN HAS DESCRIBED THE MORE SIGNIFICANT FEATURES OF THE NEW GUIDELINES AND THERE IS LITTLE THAT I CAN ADD TO HIS COMMENTS.

AS YOU MAY RECALL, MR. CHAIRMAN, I APPEARED BEFORE THE SUBCOMMITTEE IN JUNE 1982, AND OUTLINED SOME OF THE PROBLEMS WE HAD EXPERIENCED UNDER THE OLD RULES. THE GUIDELINES WHICH BECAME EFFECTIVE MONDAY ADDRESSED THOSE CONCERNS. THEY ARE THE PRODUCT OF MORE THAN EIGHT MONTHS OF REVIEW BY BOTH THE DEPARTMENT OF JUSTICE AND THE FBI, INCLUDING FBI HEADQUARTERS AND FIELD PERSONNEL. THESE CHANGES COULD NOT HAVE BEEN ACCOMPLISHED WITHOUT A CLOSE COOPERATIVE WORKING RELATIONSHIP BETWEEN THE BUREAU AND THE DEPARTMENT AND THE WILLINGNESS TO DEAL WITH SOME OF THE MOST SENSITIVE ISSUES THAT CONFRONT US IN LAW ENFORCEMENT TODAY. I AM VERY PLEASED WITH THE FINAL PRODUCT AND IT HAS MY FULL SUPPORT.

AS YOU KNOW, MR. CHAIRMAN, THE 1976 GUIDELINES WERE ORIGINALLY PROMULGATED ON A TRIAL BASIS WITH THE UNDERSTANDING THAT THEY WOULD BE REVIEWED AFTER OUR EXPERIENCE UNDER THEM COULD BE ADEQUATELY ASSESSED. OTHER GUIDELINES ISSUED AT THAT TIME, SUCH AS THE FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE GUIDELINES, HAVE ALREADY BEEN REVIEWED AND REVISED. THE NEW DOMESTIC SECURITY GUIDELINES DO NOT REFLECT ANY MAJOR CHANGES IN POLICY OR SHIFT IN DIRECTION; THEY ARE MERELY PART OF THE NORMAL EVOLUTIONARY PROCESS IN THE DEVELOPMENT OF EFFECTIVE AND WORKABLE RULES. IN OUR VIEW, THE OLD GUIDELINES WERE NO LONGER ADEQUATE TO GUIDE US IN DEALING WITH THE THE KINDS OF TERRORIST GROUPS THAT WE ARE CONFRONTED WITH TODAY. FOR THE MOST PART, THESE GROUPS ARE SMALL, COHESIVE AND DIFFICULT TO PENETRATE. THE ORGANIZATIONAL STRUCTURE IS MORE FLUID AND ILL-DEFINED THAN THAT OF GROUPS THAT WE HAVE DEALT WITH IN THE PAST AND THEY OFTEN RECEIVE DIRECT SUPPORT FOR THEIR CRIMINAL ACTIVITIES FROM OTHERS OUTSIDE THE ORGANIZATION. THIS IS A PRIMARY REASON FOR ADOPTING THE ENTERPRISE CONCEPT.

IN ADDITION, IT HAS ALSO BECOME NECESSARY FOR US TO CONTINUE OUR INVESTIGATIONS FOR LONGER PERIODS OF TIME THAN HAD BEEN THE PRACTICE IN THE PAST. THERE HAVE BEEN, AS WE HAVE SEEN IN THE BRINK'S CASE, EXAMPLES OF VIOLENT GROUPS GOING QUIET FOR SUSTAINED PERIODS OF TIME AND THEN BECOMING VIOLENT AGAIN. IF WE DISCONTINUED THAT INVESTIGATION, WE WERE REQUIRED TO CLOSE OUT THE INFORMANTS. THE NEW RULES PERMIT US TO MAINTAIN A LOW-LEVEL INVESTIGATION OF SUCH GROUPS SO LONG AS THE THRESHOLD STANDARD IS SATISFIED. THIS IMPROVES OUR ABILITY TO DETECT VIOLENCE BEFORE IT OCCURS AND TO REDUCE IT BEFORE IT SPREADS.

ADDED TO THESE CONCERNS WAS THE GROWING COMPLEXITY TO FIELD AGENTS OF DIFFERENT SETS OF GUIDELINES THAT HAVE BEEN ADOPTED OVER THE YEARS PROVIDING DIFFERENT STANDARDS, DIFFERENT REPORTING PERIODS, AND DIFFERENT APPROVAL LEVELS FOR INVESTIGATIONS THAT ARE CLOSELY RELATED. THE INTEGRATION OF THE DOMESTIC SECURITY GUIDELINES WITH OTHER PROVISIONS GOVERNING CRIMINAL AND CRIMINAL INTELLIGENCE INVESTIGATIONS PERMITS US TO STREAMLINE THE RULES FOR THE AGENTS WHO MUST CONDUCT THESE INVESTIGATIONS. IT SHOULD ALSO PROMOTE A GREATER DEGREE OF CONSISTENT PERFORMANCE.

THESE GUIDELINES DO NOT ALTER OUR CLEARLY STATED OBLIGATION TO RESPECT CONSTITUTIONAL SAFEGUARDS REFLECTED ESPECIALLY IN THE FIRST AMENDMENT. THEY DO PERMIT US, CONSISTENT WITH THAT OBLIGATION, TO SEEK AN EARLIER INTERDICTION OF UNLAWFUL VIOLENT ACTIVITY.

THE ADVOCACY PROVISION HAS PROVOKED MORE COMMENT DURING THIS REVIEW PROCESS THAN ANY OTHER SECTION OF THE GUIDELINES. THAT PROVISION MAKES IT CLEAR THAT STATEMENTS THAT ADVOCATE CRIMINAL ACTIVITY OR INDICATE AN APPARENT INTENT TO ENGAGE IN CRIME, PARTICULARLY CRIMES OF VIOLENCE, MAY JUSTIFY INVESTIGATION UNLESS IT IS APPARENT, FROM THE CIRCUMSTANCES OR THE CONTEXT IN WHICH THE STATEMENTS ARE MADE, THAT THERE IS NO PROSPECT OF HARM.

THIS PROVISION DOES NOT STAND ALONE. IT SHOULD BE READ AS GUIDANCE IN IMPLEMENTING THE PROVISIONS GOVERNING PRELIMINARY INQUIRIES AND FULL INVESTIGATIONS.

AS THE ATTORNEY GENERAL INDICATED, STATEMENTS ADVOCATING CRIMINAL ACTIVITY MUST BE VIEWED IN CONTEXT BEFORE FURTHER INQUIRY OR INVESTIGATION WILL BE AUTHORIZED. ADVOCACY OF UNPOPULAR IDEAS OR POLITICAL DISSENT ALONE IS NOT AN ADEQUATE BASIS; BUT WHEN A GROUP DECLARES ITS INTENT TO ENGAGE IN CRIMINAL VIOLENCE OR URGES OTHERS TO DO SO, WE CANNOT BE EXPECTED TO IGNORE THEIR WORDS OR ASSUME THEY DO NOT MEAN WHAT THEY SAY.

A PRELIMINARY INQUIRY CAN BE CONDUCTED IN THESE CIRCUMSTANCES ONLY WHEN THE STATEMENTS INDICATE "THE POSSIBILITY OF CRIMINAL CONDUCT," AND EVEN WHEN SUCH AN INQUIRY IS OPENED, ITS PURPOSE IS SOLELY TO OBTAIN "THE INFORMATION NECESSARY TO MAKE AN INFORMED JUDGMENT AS TO WHETHER A FULL INVESTIGATION IS WARRANTED." ADVOCACY OF CRIME MAY RESULT IN THE INITIATION OF A FULL GENERAL CRIMES INVESTIGATION WHEN IT CONSTITUTES FACTS OR CIRCUMSTANCES THAT REASONABLY INDICATE THAT A FEDERAL CRIME HAS BEEN, IS BEING, OR WILL BE COMMITTED. IT MAY LEAD TO THE OPENING OF A DOMESTIC SECURITY/TERRORISM INVESTIGATION WHEN THE FACTS OR CIRCUMSTANCES REASONABLY INDICATE THAT TWO OR MORE PERSONS ARE ENGAGED IN AN ENTERPRISE THAT SEEKS TO ACCOMPLISH POLITICAL OR SOCIAL CHANGE THROUGH VIOLENCE.

IT IS LIKELY THAT IN MOST INSTANCES A PRELIMINARY INQUIRY WILL BE ALL THAT IS NECESSARY TO DETERMINE WHETHER THE ADVOCACY OF VIOLENCE SIGNALS A REAL THREAT OF CRIME. WE ARE NOT PREPARED, HOWEVER, TO RULE OUT THE POSSIBILITY OF A FULL INVESTIGATION BASED ON SUCH ADVOCACY, PARTICULARLY WHERE THE STATEMENT ITSELF INDICATES NOT ONLY THE INTENT TO POSE AN IMMEDIATE THREAT TO HUMAN LIFE BUT THE APPARENT CAPABILITY TO CARRY OUT THAT THREAT.

IN SUMMARY, MR. CHAIRMAN, OUR EXPERIENCE UNDER THE OLD STANDARDS HAS BEEN USEFUL IN SHARPENING THE RULES AND IMPROVING OUR EFFECTIVENESS WITHOUT DIMINISHING IMPORTANT SAFEGUARDS THAT HAVE BEEN IN PLACE OVER THE PAST SEVERAL YEARS.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED TESTIMONY AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THE SUBCOMMITTEE MIGHT HAVE.

Senator DENTON. Senator Biden would also like his letter to the Attorney General and the Attorney General's response included in the record, and it is so ordered.

[Senator Biden's letter and the Attorney General's response are found as exhibit G, beginning on p. 91 in the appendix.]

Senator DENTON. I want to thank you, Mr. Jensen, and you, Judge Webster, for your testimony and valuable contribution to these hearings. I may be submitting additional questions to you, as might other members of the subcommittee, and I ask that you submit your written responses within 30 days of the time you receive the questions.

Thank you very much, gentlemen.

This hearing is adjourned subject to the call of the Chair.

[At 4:21 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL SUBMISSIONS FOR THE RECORD

EXHIBIT A



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, MARCH 7, 1983

AG
(202) 633-2018

Attorney General William French Smith today announced new guidelines to clarify the scope of domestic security and terrorism investigations by the Federal Bureau of Investigation.

The revised guidelines, which will become effective on March 21, will succeed the 1976 Domestic Security Guidelines, which were the first of their kind.

The new guidelines are needed to ensure protection of the public from the greater sophistication and changing nature of domestic groups that are prone to violence, the Attorney General said.

At the same time, the guidelines will adequately protect lawful and peaceful political dissent, he said.

The new guidelines are the product of more than eight months of review involving numerous components in the Department of Justice, including FBI Headquarters and FBI field personnel.

"We have carefully evaluated our seven years of experience with the original guidelines in light of the operational concerns of FBI field personnel and the comments of interested persons in the Congress and elsewhere," Smith said.

"This review has shown that investigative guidelines do serve important functions. They provide our agents with the direction and certainty they need to perform their critical responsibilities effectively. At the same time, guidelines create a structure of review and accountability to reassure the public that our agents are acting properly under the law."

"It is equally clear," Smith said, "that our citizens are no less threatened by groups which engage in criminal violence for political or racist purposes than by those which operate lawlessly for financial gain. Thus, we must ensure that the criminal intelligence resources which have been brought to bear so effectively in organized crime and racketeering investigations are effectively employed in domestic security/terrorism cases."

During the past seven years, the Attorney General said, the character of domestic groups prone to violence has changed and the structures of these groups have become more fluid and sophisticated. "Moreover, the agents of the FBI have clearly demonstrated their professional competence, integrity and ability to adhere to requirements of law," he said. "The time has therefore come to eliminate separate regulations for domestic security/terrorism investigations and treat these matters as an integral part of FBI's general law enforcement responsibilities."

"These new guidelines will clarify the standards governing these investigations and reaffirm the importance of gathering criminal intelligence about violence-prone groups, while retaining adequate protections for lawful and peaceful political dissent."

FBI Director William H. Webster observed, "This revision is responsive to concerns expressed by our field personnel and is in our view an extremely balanced and positive law enforcement initiative."

For example, Webster said that as a response to field agents' need for clear and consistent standards, the new guidelines will be integrated with the existing "General Crimes and Organized Crime Guidelines" that have governed many FBI investigations for several years.

These omnibus guidelines will thus include in a single document, with parallel terminology, rules the FBI will follow for cases involving (1) general crimes, (2) racketeering enterprises, and (3) domestic security and terrorism. Only the latter category has been redrafted; the guidelines for the other two types of investigation are essentially unchanged.

The domestic security/terrorism portion of these combined guidelines recognize that there can be special First Amendment

concerns in these investigations. However, Attorney General Smith said, when persons advocate crime, particularly violent crime -- such as blowing up a building or killing a public official -- those persons cannot expect law enforcement agencies to refrain from making reasonable further inquiry to ensure protection of the public.

Of course, Smith said, statements advocating criminal activity must be viewed in context before further inquiry will be authorized. Furthermore, the Guidelines make clear, both in the Statement of Principles and in the review and accountability provisions, that constitutionally-protected advocacy of unpopular ideas or political dissent alone cannot serve as the basis for an investigation.

Other significant features of the new guidelines include:

1. The new guidelines employ the "criminal enterprise" concept successfully used in organized crime investigations. This will allow the FBI to cross organizational lines in a domestic security/terrorism investigation without regard to what a particular group or element of an organization might call itself. Thus, the FBI will be able to deal more effectively with groups which knowingly support the criminal activities of an enterprise.

If, for example, members of a group are providing safehouses, money, or weapons supporting the criminal activities of a terrorist group, they would be investigated as part of the same criminal enterprise. This avoids the necessity of opening a separate investigation of such groups, with a separate justification.

The enterprise concept will also permit the FBI to focus investigation upon violent factions of a larger group, without investigating the entire group. The new approach recognizes that terrorist groups today have a fluid membership and often lack organizational structure, yet function as a single enterprise directed toward a common goal.

2. The multi-level approach of the old guidelines, with different standards for "preliminary", "limited" and "full" investigations, is eliminated. There is to be only one form of domestic security/terrorism investigation.

The FBI will be authorized to undertake such investigations when the facts or circumstances "reasonably indicate" the existence of a domestic security/terrorism enterprise--the standard now followed in organized crime investigations.

The Attorney General observed that having consistent investigative standards for racketeering and domestic security/terrorism investigations should help to eliminate any perception that actual or imminent commission of a violent crime is a prerequisite to investigation. This will help agents to discover terrorist activity before anyone is hurt, he said. At the same time, Smith observed, this standard requires a valid factual basis and law enforcement purpose, and thus precludes fishing expeditions.

If information falls short of the "reasonable indication" standard, yet still calls for further checking, agents can proceed under the existing "preliminary inquiry" rules of the General Crimes portion of the combined guidelines.

3. A major criticism of the old guidelines has been the tendency to close investigations and terminate informant coverage when there is a lull in violent criminal activity--perhaps only temporary--or the group has simply gone dormant.

"A helpful change made by the new guidelines," Director Webster said, "would permit the FBI to monitor organizations which may be temporarily inactive but whose prior record or stated objectives indicate a need for continued federal interest, so long as the minimum standard for investigation is satisfied."

4. Other provisions of the new Guidelines make clear FBI's authority to provide investigative assistance to the Secret Service in support of that agency's protective responsibilities. The Guidelines also confirm the authority of FBI agents to collect publicly-available information, such as periodicals, as long as that activity is consistent with the provisions of the Privacy Act.

In a memorandum transmitting the new guidelines to Webster, the Attorney General thanked the FBI for its invaluable assistance in preparing the revisions and stated:

"It is important that the FBI devote its criminal intelligence expertise to domestic security/terrorism cases as it has, with increasing success, in organized crime cases. In the past, operating under distinct guidelines setting different standards and procedures

has hampered this effort. The new approach, combining both organized crime and domestic security investigations in a single set of guidelines should make it easier for your agents to focus their intelligence efforts on those criminal enterprises which threaten our people to attain ideological goals."

The Attorney General said that he and Director Webster would be observing carefully how these revisions worked in practice and continue to welcome the views of interested members of Congress and the public. Smith expressed confidence that established Department of Justice review procedures and the professionalism and adherence to the rule of law that is fundamental in the training of FBI agents will assure compliance with the protections enumerated in the guidelines.

EXHIBIT B



Office of the Attorney General

Washington, D. C. 20530

March 7, 1983

MEMORANDUM FOR WILLIAM H. WEBSTER
Director, Federal Bureau of Investigation

Re: Attorney General's Guidelines on Domestic
Security/Terrorism Investigations

I am transmitting formally herewith an approved copy of the Attorney General's Guidelines on Domestic Security/Terrorism Investigations, which have been integrated with the Attorney General's Guidelines for General Crimes and Organized Crime Investigations. These guidelines, dated today, will become effective in 14 days.

As you have recognized, enterprises prone to terrorism or criminal violence for political or racist purposes are clearly no less dangerous to our citizens than those who operate lawlessly for financial gain. I am confident that these new guidelines will permit our agents to detect and prevent violent crime by such enterprises with greater certainty and effectiveness, while ensuring the public that they are acting properly under the law.

It is important that the FBI devote its criminal intelligence expertise to domestic security/terrorism cases as it has, with increasing success, in organized crime cases. In the past, operating under distinct guidelines setting different standards and procedures has hampered this effort. The new approach, combining both organized crime and domestic security investigations in a single set of guidelines, should make it easier for your agents to focus their intelligence efforts on those criminal enterprises which threaten our people to attain ideological goals.

These Guidelines are the product of more than eight months of careful review involving numerous components of the Department of Justice. This review process has been extremely worthwhile in demonstrating both the merits of guidelines generally and the need for certain specific revisions here. I greatly appreciate the efforts of you and your staff in helping to identify the precise concerns of field agents and in the critical drafting process itself. I think that the Guidelines will help the agents proceed with more confidence in this high priority area of law enforcement, while ensuring the public that these agents will continue to act within the law as first-class professionals.

I look forward to receiving your views with respect to other guidelines or related matters which may also warrant review.


William French Smith
Attorney General



Office of the Attorney General
Washington, D. C. 20530

THE ATTORNEY GENERAL'S GUIDELINES ON GENERAL CRIMES,
RACKETEERING ENTERPRISE AND
DOMESTIC SECURITY/TERRORISM INVESTIGATIONS

As the primary criminal investigative agency in the federal government, the FBI has the authority and responsibility to investigate all criminal violations of federal law not exclusively assigned to another federal agency. The FBI thus plays a central role in national law enforcement and in the proper administration of justice in the United States.

Investigations by the FBI are premised upon the important duty of government to protect the public against general crimes, against organized criminal activity, and against those who would engage in political or racial terrorism or would destroy our constitutional system through criminal violence. At the same time, that duty must be performed with care to protect individual rights and to insure that investigations are confined to matters of legitimate law enforcement interest. The purpose of these Guidelines, therefore, is to establish a consistent policy in such matters. The Guidelines should encourage Agents of the FBI to perform their duties with greater certainty, confidence and effectiveness. They should also give the public a firm assurance that the FBI is acting properly under the law.

These Guidelines provide guidance for all investigations by the FBI of crimes and crime-related activities. Investigations involving foreign intelligence, foreign counterintelligence and international terrorism matters are the subject of separate guidelines. The standards and requirements set forth herein govern the circumstances under which an investigation may be begun, and the permissible scope, duration, subject-matters, and objectives of an investigation.

All investigations of crime or crime-related activities shall be undertaken in accordance with one or more of these Guidelines. Part I sets forth general principles that apply to all investigations conducted under these Guidelines. Part II governs investigations undertaken to detect, prevent and prosecute specific violations of federal law. Part III A governs criminal intelligence investigations undertaken to obtain information concerning enterprises which are engaged in racketeering activities involving violence, extortion or public corruption. Part III B governs criminal intelligence investigations undertaken to obtain information concerning enterprises which seek to achieve political or social change through violence.

These Guidelines are issued under the authority of the Attorney General as provided in 28 U.S.C. 509, 510, and 533.

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* * *

I. General Principles

Preliminary inquiries and investigations governed by these Guidelines are conducted for the purpose of preventing, detecting, or prosecuting violations of federal law. They shall be conducted with as little intrusion into the privacy of individuals as the needs of the situation permit.

All preliminary inquiries shall be conducted pursuant to the General Crimes Guidelines. There is no separate provision for a preliminary inquiry under the Criminal Intelligence Guidelines. A preliminary inquiry shall be promptly terminated when it becomes apparent that a full investigation is not warranted. If, on the basis of information discovered in the course of a preliminary inquiry, an investigation is warranted, it may be conducted as a general crimes investigation, or a criminal intelligence investigation, or both. All such investigations, however, shall be based on a reasonable factual predicate and shall have a valid law enforcement purpose.

In its efforts to anticipate or prevent crime, the FBI must at times initiate investigations in advance of criminal conduct. It is important that such investigations not be based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the Constitution or laws of the United States. When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

General crimes investigations and criminal intelligence investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement interest justifies their continuance.

Nothing in these Guidelines is intended to prohibit the FBI from collecting and maintaining publicly available information consistent with the Privacy Act.

Nothing in these Guidelines prohibits the FBI from ascertaining the general scope and nature of criminal activity in a particular location or sector of the economy.

II. General Crimes Investigations

A. Definitions

(1) "Exigent circumstances" are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

(2) "Sensitive criminal matter" is any alleged criminal conduct involving corrupt action by a public official or political candidate, the activities of a foreign government, the activities of a religious organization or a primarily political organization or the related activities of any individual prominent in such an organization, or the activities of the news media; and any other matter which in the judgment of a Special Agent in Charge (SAC) should be brought to the attention of the United States Attorney or other appropriate official in the Department of Justice, as well as FBI Headquarters (FBIHQ).

B. Preliminary Inquiries

(1) On some occasions the FBI may receive information or an allegation not warranting a full investigation -- because there is not yet a "reasonable indication" of criminal activities -- but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads. In such circumstances, though the factual predicate for an investigation has not been met, the FBI may initiate an "inquiry" involving some measured review, contact, or observation activities in response to the allegation or information indicating the possibility of criminal activity.

This authority to conduct inquiries short of a full investigation allows the government to respond in a measured way to ambiguous or incomplete information and to do so with as little intrusion as the needs of the situation permit. This is especially important in such areas as white-collar crime where no complainant is involved or when an allegation or information is received from a source of unknown reliability. It is contemplated that such inquiries would be of short duration and be confined solely to obtaining the information necessary to make an informed judgment as to whether a full investigation is warranted.

A preliminary inquiry is not a required step when facts or circumstances reasonably indicating criminal activity are already available; in such cases, a full investigation can be immediately opened.

(2) The FBI supervisor authorizing an inquiry shall assure that the allegation or other information which warranted the inquiry has been recorded in writing. In sensitive criminal matters, the United States Attorney or an appropriate Department of Justice official shall be

notified of the basis for an inquiry as soon as practicable after the opening of the inquiry, and the fact of notification shall be recorded in writing.

(3) Inquiries shall be completed within 90 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 30-day periods may be granted by FBI Headquarters upon receipt of a written request and statement of reasons why further investigative steps are warranted when there is no "reasonable indication" of criminal activity.

(4) Before employing an investigative technique in an inquiry, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether an intrusive technique should be used in an inquiry depends on the seriousness of the possible crime and the strength of the information indicating the possible existence of the crime. However, the techniques used in an inquiry should generally be less intrusive than those employed in a full investigation. It is recognized that choice of technique is a matter of judgment.

(5) The following investigative techniques shall not be used during an inquiry:

- (a) Mail covers;
- (b) Mail openings;
- (c) Nonconsensual electronic surveillance or any other investigative technique covered by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-2520.

(6) The following investigative techniques may be used in an inquiry without any prior authorization from a supervisory agent:

- (a) Examination of FBI indices and files;
- (b) Examination of records available to the public and other public sources of information;
- (c) Examination of available federal, state and local government records;
- (d) Interview of the complainant, previously established informants, and confidential sources;
- (e) Interview of the potential subject;
- (f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or co-workers unless the interviewee was the complainant;
- (g) Physical or photographic surveillance of any person.

The use of any other lawful investigative technique in an inquiry shall require prior approval by a supervisory agent, except in exigent circumstances. Where a technique is highly intrusive, a supervisory agent shall approve its use in the inquiry stage only in compelling circumstances and when other investigative means are not likely to be successful.

(7) Where a preliminary inquiry fails to disclose sufficient information to justify an investigation, the FBI shall terminate the inquiry and make a record of the closing. In a sensitive criminal matter, the FBI shall notify the United States Attorney of the closing and record the fact of notification in writing. Information on an inquiry which has been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice official.

(8) All requirements regarding inquiries shall apply to reopened inquiries. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified as soon as practicable after the reopening of an inquiry.

C. Investigations

(1) A general crimes investigation may be initiated by the FBI when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. The investigation may be conducted to prevent, solve, and prosecute such criminal activity.

The standard of "reasonable indication" is substantially lower than probable cause. In determining whether there is reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or impending violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

(2) Where a criminal act may be committed in the future, preparation for that act can, of course, amount to a current criminal violation under the conspiracy or attempt provisions of federal criminal law, if there are present the requisite agreement and overt act, or substantial step toward completion of the criminal act and intention to complete the act. With respect to criminal activity that may occur in the future but does not yet involve a current criminal conspiracy or attempt, particular care is necessary to assure that there exist facts and circumstances amounting to a reasonable indication that a crime will occur.

(3) The FBI supervisor authorizing an investigation shall assure that the facts or circumstances meeting the standard of reasonable indication have been recorded in writing.

In sensitive criminal matters, as defined in paragraph A(2), the United States Attorney or an appropriate Department of Justice official and FBIHQ shall be notified in writing of the basis for an investigation as soon as practicable after commencement of the investigation.

(4) The Special Agent conducting an investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances require and as requested by the prosecutor.

When, during an investigation, a matter appears to

arguably warrant prosecution, the Special Agent shall present the relevant facts to the appropriate federal prosecutor. In every sensitive criminal matter, the FBI shall notify the appropriate federal prosecutor of the termination of an investigation within 30 days of such termination. Information on investigations which have been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice official.

(5) When a serious matter investigated by the FBI is referred to state or local authorities for prosecution, the FBI, insofar as resources permit, shall promptly advise the federal prosecutor in writing if the state or local authorities decline prosecution or fail to commence prosecutive action within 120 days. Where an FBI field office cannot provide this follow-up, the SAC shall so advise the federal prosecutor.

(6) When credible information is received concerning serious criminal activity not within the FBI investigative jurisdiction, the FBI field office shall promptly transmit the information or refer the complainant to the law enforcement agencies having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of an informant, interfere with an informant's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then whenever feasible the FBI field office shall make at least limited disclosure to the law enforcement agency having jurisdiction, and full disclosure shall be made as soon as the need for restricting dissemination is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make a periodic report to the Deputy Attorney General on such nondisclosure and incomplete disclosures, in a form suitable to protect the identity of informants and confidential sources.

Whenever information is received concerning unauthorized criminal activity by an informant or confidential source, it shall be handled in accord with paragraph G of the Attorney General's Guidelines on Use of Informants and Confidential Sources.

(7) All requirements regarding investigations shall apply to reopened investigations. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified in writing as soon as practicable after the reopening of an investigation.

III. Criminal Intelligence Investigations

This section authorizes the FBI to conduct criminal intelligence investigations of certain enterprises who seek either to obtain monetary or commercial gains or profits through racketeering activities or to further political or social goals through activities that involve criminal violence. These investigations differ from general crimes investigations, authorized by Section II, in several important respects. As a general rule, an investigation of a completed criminal act is normally confined to determining who committed that act and with securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. An intelligence investigation of an ongoing criminal enterprise must determine the size and composition of the group involved, its geographic dimensions, its past acts and intended criminal goals, and its capacity for harm. While a standard criminal investigation terminates with the decision to prosecute or not to prosecute,

the investigation of a criminal enterprise does not necessarily end, even though one or more of the participants may have been prosecuted.

In addition, the organization provides a life and continuity of operation that are not normally found in a regular criminal activity. As a consequence, these investigations may continue for several years. Furthermore, as Justice Powell noted, the focus of such investigations "May be less precise than that directed against more conventional types of crime." United States v. United States District Court, 407 U.S. 297, 322 (1972). Unlike the usual criminal case, there may be no completed offense to provide a framework for the investigation. It often requires the fitting together of bits and pieces of information many meaningless by themselves to determine whether a pattern of criminal activity exists. For this reason, the investigation is broader and less discriminate than usual, involving "the interrelation of various sources and types of information." Id.

Members of groups or organizations acting in concert to violate the law present a grave threat to society. An investigation of organizational activity, however, may present special problems particularly where it deals with politically motivated acts. "There is often a convergence of First and Fourth Amendment values," in such matters that is "not found in cases of 'ordinary' crime." Id. Thus special care must be exercised in sorting out protected activities from those which may lead to violence or serious disruption of society. As a consequence, the guidelines establish safeguards for group investigations of special sensitivity, including tighter management controls and higher levels of review.

A. Racketeering Enterprise Investigations

This section focuses on investigations of organized crime. It is concerned with investigation of entire enterprises, rather than individual participants in specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members. Except as specified below, this authority may be exercised only when the activity engaged in by the racketeering enterprise involves violence, extortion, narcotics, or systematic public corruption.

1. Definitions

Racketeering activity is any offense, including the violation of state law, encompassed by the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961(1).

2. General Authority

- a. The FBI has authority to conduct investigations of racketeering enterprises whose activities involve violence, extortion, narcotics, or systematic public corruption. A racketeering enterprise not engaged in such activities may be investigated under this authority only upon a written determination by the Director, concurred in by the Attorney General, that such investigation is justified by exceptional circumstances.
- b. A racketeering enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in a continuing course of conduct for the purpose of obtaining monetary or commercial gains or profits wholly or in part through racketeering activity. The standard of "reasonable indication" is identical to

that governing the initiation of a general crimes investigation under Part II.

- c. Authority to conduct racketeering enterprise investigations is separate from and in addition to general crimes investigative authority under Part II and domestic security/terrorism investigations under Part III. Information warranting initiation of a racketeering enterprise investigation may be obtained during the course of a general crimes inquiry or investigation. Conversely, a racketeering enterprise investigation may yield information warranting a general crimes inquiry or investigation or a domestic security/terrorism investigation.

3. Purpose

The immediate purpose of a racketeering enterprise investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph II D below, with a view to the longer range objective of detection, prevention, and prosecution of the criminal activities of the enterprise.

4. Scope

- a. A racketeering enterprise investigation properly initiated under these guidelines may collect such information as:
 - (i) The members of the enterprise and other persons likely to be knowingly acting in the furtherance of racketeering activity, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;
 - (ii) the finances of the enterprise;
 - (iii) the geographical dimensions of the enterprise; and
 - (iv) the past and future activities and goals of the enterprise.
- b. In obtaining the foregoing information, any lawful investigative technique may be used, in accordance with the requirements of paragraphs C 4 and 5 of Part I.

5. Authorization and Renewal

- a. A racketeering enterprise investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts and circumstances reasonably indicating the existence of a racketeering enterprise whose activities involve violence, extortion, narcotics, or systematic public corruption. In such cases the FBI shall notify the Attorney General or his designee of the opening of the investigation. An investigation of a racketeering enterprise not involved in these activities may be authorized only by the Director upon his written determination, concurred in by the Attorney General, that such investigation is warranted by exceptional circumstances.

In all investigations, the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation.

- b. A racketeering enterprise investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each not to exceed 180 days. Renewal authorization shall be obtained from the Director or designated Assistant Director. The concurrence of the Attorney General must also be obtained if his concurrence was initially required to authorize the investigation.
- c. Investigations shall be reviewed by the Director or designated senior Headquarters official on or before the expiration of the period for which the investigation and each renewal thereof is authorized.
- d. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

B. Domestic Security/Terrorism Investigations

This section focuses on investigations of enterprises, other than those involved in international terrorism, whose goals are to achieve political or social change through activities that involve force or violence. Like racketeering enterprise investigations, it is concerned with the investigation of entire enterprises, rather than individual participants and specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

1. General Authority

- a. A domestic security/terrorism investigation may be initiated when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States. The standard of "reasonable indication" is identical to that governing the initiation of a general crimes investigation under Part II. In determining whether an investigation should be conducted, the FBI shall consider all of the circumstances including: (1) the magnitude of the threatened harm; (2) the likelihood it will occur; (3) the immediacy of the threat; and (4) the danger to privacy and free expression posed by an investigation.
- b. Authority to conduct domestic security/terrorism investigations is separate from and in addition to general crimes investigative authority under Part II, racketeering enterprise investigations under Part III A and international terrorism investigations under the Attorney General's Guidelines for Foreign Intelligence Collection and Foreign Counterintelligence Investigations. Information warranting initiation of an investigation under this section may be obtained through the course of a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism. Conversely, a domestic security/terrorism investi-

gation may yield information warranting a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation of international terrorism.

- c. In the absence of any information indicating planned violence by a group or enterprise, mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this section. For alternative authorities see Part II relating to General Crimes Investigations and the Attorney General's Guidelines on "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest." This does not preclude the collection of information about public demonstrations by enterprises that are under active investigation pursuant to paragraph B 1(a) above.

2. Purpose

The immediate purpose of a domestic security/terrorism investigation is to obtain information concerning the nature and structure of the enterprise as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the criminal activities of the enterprise.

3. Scope

- a. A domestic security/terrorism investigation initiated under these guidelines may collect such information as:
 - (i) the members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise;
 - (ii) the finances of the enterprise;
 - (iii) the geographical dimensions of the enterprise; and
 - (iv) past and future activities and goals of the enterprise.
- b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with requirements of Part IV.

4. Authorization and Renewal

- a. A domestic security/terrorism investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise as described in this subsection. In such cases, the FBI shall notify the Office of Intelligence Policy and Review of the opening of the investigation. In all investigations the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation.
- b. A domestic security/terrorism investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each

not to exceed 180 days. Renewal authorization shall be obtained from the Director or designated Assistant Director.

- c. Investigations shall be reviewed by the Director or designated Senior Headquarters official on or before the expiration period for which the investigation and each renewal thereof is authorized.
- d. Each investigation should be reviewed at least annually to insure that the threshold standard is satisfied and that continued allocation of investigative resources is warranted. In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence, nor is there any immediate threat of harm -- yet the composition, goals and prior history of the group suggests the need for continuing federal interest. Under those circumstances, the investigation may be continued but reasonable efforts should be made to limit the coverage to information which might indicate a change in the status or criminal objectives of the enterprise.
- e. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.
- f. The FBI shall report the progress of a domestic security/terrorism investigation to the Office of Intelligence Policy and Review not later than 180 days after the initiation thereof, and the results at the end of each year the investigation continues. The Office of Intelligence Policy and Review shall review the results of each investigation at least annually.

IV. Investigative Techniques

- A. When conducting investigations under these guidelines the FBI may use any lawful investigative technique. Before employing a technique, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether a highly intrusive technique should be used depends on the seriousness of the crime and the strength of the information indicating the existence of the crime. It is recognized that choice of technique is a matter of judgment.
- B. All requirements for use of a technique set by statute, Department regulations and policies, and Attorney General Guidelines must be complied with. The investigative techniques listed below are subject to the noted restrictions:
 - 1. Informants and confidential sources must be used in compliance with the Attorney General's Guidelines on the Use of Informants and Confidential Sources;
 - 2. Undercover operations must be conducted in compliance with the Attorney General's Guidelines on FBI Undercover Operations;
 - 3. Undisclosed participation in the activities of an organization by an undercover employee or

cooperating private individual in a manner that may influence the exercise of rights protected by the First Amendment must be approved by FBIHQ, with notification to Department of Justice;

4. Nonconsensual electronic surveillance must be conducted pursuant to the warrant procedures and requirements of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-2520;
5. Pen registers must be authorized pursuant to Department policy. This requires an order from a federal district court and an extension every 30 days, under the December 18, 1979, memorandum from the Assistant Attorney General in charge of the Criminal Division to all United States Attorneys;
6. Consensual electronic monitoring must be authorized pursuant to Department policy. For consensual monitoring of conversations other than telephone conversations, advance authorization must be obtained in accordance with established guidelines. This applies both to devices carried by the cooperating participant and to devices installed on premises under the control of the participant. See USAM 9-7.013. For consensual monitoring of telephone conversations, advance authorization must be obtained from the SAC and the appropriate U. S. Attorney, except in exigent circumstances;
7. Searches and seizures must be conducted under the authority of a valid warrant unless the search or seizure comes within a judicially recognized exception to the warrant requirement. See also, Attorney General's Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties;
8. Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically on applicable law and Department procedure.

V. Dissemination of Information

The FBI may disseminate information during investigations conducted pursuant to these guidelines to another Federal agency or to a State or local criminal justice agency when such information:

- A. falls within the investigative or protective jurisdiction or litigative responsibility of the agency;
- B. may assist in preventing a crime or the use of violence or any other conduct dangerous to human life;
- C. is required to be furnished to another Federal agency by Executive Order 10450, as amended, dated April 27, 1953, or a successor Order;
- D. is required to be disseminated by statute, inter-agency agreement approved by the Attorney General, or Presidential Directive;

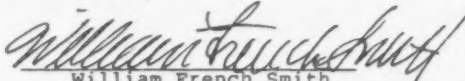
and to other persons and agencies as permitted by Sections 552 and 552a of Title V, U.S.C.

VI. Cooperation with Secret Service

The FBI is authorized to provide investigative assistance in support of the protective responsibilities of the Secret Service, provided that all preliminary inquiries or investigations are conducted in accordance with the provisions of these guidelines.

VII. Reservation

- A. Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts, or other records in the government's possession, or the performance of similar services at the specific request of a Department or agency of the United States. Such reviews, audits or similar services must be for the purpose of detecting or preventing violations of federal law which are within the investigative responsibility of the FBI.
- B. Nothing in these guidelines is intended to limit the FBI's responsibilities to investigate certain applicants and employees under the federal personnel security program.
- C. These guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any manner, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the Department of Justice.


William French Smith
Attorney General

Date: March 7, 1983

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTICE

TRANSCRIPT OF THE PRESS BRIEFING BY THE HONORABLE WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES, AND WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ON THE NEW GUIDELINES, WASHINGTON, D.C., MARCH 7, 1983

PROCEEDINGS

Mr. SMITH. I signed this morning some new guidelines dealing with the subject of domestic security and terrorism. And I thought that what I would do would be to just briefly run through some of the changes that have been accomplished in those guidelines.

First, as you know, the original guidelines were issued in 1976, and we now have almost seven years of experience under them. During the last eight or nine or 10 months, we have been reviewing our experience under the original guidelines. And when I say, "we," I mean all of the departments or divisions here that are involved with them, such as, obviously, the FBI, and particularly the FBI Field Operations, as well as our own—what I've got is the divisions here that have some interest, and there are quite a number.

We've also discussed them with the appropriate members of Congress, both on the Senate side and on the House side, and as a result of all of those discussions, we have come up with the document which you have in front of you and which I signed this morning. In essence, they represent an effort to simplify and clarify and also in some cases to make some procedural and substantive changes.

First, with respect to simplifying, we have put them where we think they appropriately belong, namely, as part of the general crimes and racketeering enterprises guidelines. In a very real way from the standpoint of the public and from the standpoint of the victims, it does not make much difference whether a criminal enterprise is involved with the motive of profit or whether it involves a political or social cause if force and violence is involved.

We have also eliminated the three step investigative procedures which existed under the old guidelines. There, as you remember, they were preliminary, limited, and full investigations, and in each of those steps there were different standards and different investigative techniques and different reporting periods and different supervisory levels.

We have now established just a single investigating step: that is, the full investigation. In addition to that, there is also the preliminary inquiry which exists right now under the general crimes guidelines, and that preliminary inquiry procedure would be available here.

We have established as the standard the same standard which now exists for racketeering enterprises: namely, whether the fact and circumstances reasonably indicate that two or more persons are engaged in an enterprise to further political or social goals in whole or in part through the use of forces or violence in violation of the federal law. Now, that is a standard which is significantly below probable cause, but it does establish a criminal nexus.

Another significant change involves the adoption of the criminal enterprise concept. There has been a good deal of change in recent years in the forms of organizations and the method of operation. By using the criminal enterprise approach, which is the approach, as I say, that is now used with racketeering and organized crime very successfully, we are able to deal with the problem as it is and not be confined by artificial organizational lines which, in so many cases, are very loose, disjointed, and hard to define.

For example, in any particular activity, we would be able to include front organizations or support organizations or the operators of safe houses into a single investigation without necessarily applying the standard to each one individually, which might be very, very difficult to do. Of course, this has been the approach, as I say, with the racketeering enterprise guidelines.

Concerning advocacy, obviously advocacy, the exercise of First Amendment rights, certainly under these guidelines would in no way trigger in investigation, but advocacy of criminal activity, force and violence, or statements which create an apparent attempt to commit a crime, could trigger an investigation. For example, if somebody threatens to kill the president, that is something that we certainly would have to look into. And in the guidelines here we have clarified that point.

With respect to public information, we've clarified the situation there: namely, that information which is available to the public can be utilized, provided that there is not violation of the Privacy Act. That's a line which is not too easy to draw, but it's one that has to be drawn from time to time on a case by case basis.

We've also clarified the situation with respect to whether a person with low level investigations—namely, where an organization that has—comes within the standard necessary of an investigation, for one reason or another, has laid low during a certain period, either because of arrest and conviction or for other reasons, that that investigation can continue so long as it continues to meet the threshold standard.

There is also a provision which provides for information to be made available to the Secret Service in circumstances where it is necessary and important to do so. I think, Bill, I have probably covered most of the principal changes.

These guidelines, we think, will be very helpful to the agents in the field because they do greatly simplify the procedures. They are particularly helpful because they adopt procedures that are already in existence with respect to general crimes and racketeering investigation situations. And that is very important from an operational standpoint.

So, all in all, we think these are substantial improvements, and we are pleased with this result as a result of this long and extended investigation and effort in review of the experiences which we have had under the old guidelines up to now.

VOICE. Mr. Attorney General, your press releases say that the guidelines will adequately protect lawful and peaceful political dissent. Can you tell me specifically how and how you are doing to work it in cases such as the nuclear freeze movement or any other political movement that may have Soviet influence.

Mr. SMITH. Well, we don't see any problem with respect to that kind of activity, so long as the activity does not involve itself in the types of criminal activity that we're talking about. So long as any organization is exercising its first amendment rights and doing nothing more in the area of criminal activity, then they would not be covered by these guidelines.

VOICE. Will you explain—

VOICE. Would not the Leir guidelines have allowed an inquiry where there was advocacy of violence?

Mr. SMITH. I beg your pardon.

VOICE [inaudible]. When there was advocacy for violence?

Mr. SMITH. Well, in many circumstances that would be true.

VOICE. Can you explain on page 4 under definitions of sensitive criminal matters, there is a reference in there among the laundry list of possible sensitive criminal matters—and I don't want to express any particular sensitivity—to the activities of the news media. Had there been any criminal investigations by the FBI or the Justice Department that you could describe to us having to do with criminal conduct by the news media?

Mr. SMITH. It sounds to me as though you're being awfully defensive.

VOICE. Right. Right. I just wanted to make sure—

Mr. SMITH. Either defensive or very sensitive, one or the other.

VOICE. Well, can you answer my question. What activities of the news media might involve criminal conduct that you had in mind here?

Mr. SMITH. Well, we—this particular item does not involve any change. This has been in the general crimes investigations definition all along. We haven't changed anything.

VOICE. What activities, though, do you have in mind?

Mr. SMITH. Well—

VOICE. What criminal activity do you expect that the news media might be involved in?

Mr. SMITH. Well, other than the usual [Laughter.]

VOICE. Why would you put in something that's superfluous just because it was in the past guidelines? You just spend eight months reviewing them.

Mr. SMITH. Well, actually, I want to emphasize that we have not made any changes in the guidelines dealing with general crimes or with racketeering enterprises. There hasn't been any change.

The only change is in the domestic security terrorism guidelines.

VOICE. No, no, this stuff was not reviewed? This was just regurgitated in these guidelines?

Mr. SMITH. Regurgitated?

Mr. WEBSTER. This is a review of the—Carl, this was a review of domestic security guidelines. At the same time we did that, because we were integrating it with the general crimes and racketeering, it was reviewed from the standpoint of symmetry

and where clauses ought to be placed, and there are some changes in the general statement of principles.

But this was not a review of general crimes investigations; it was a review of domestic security investigations.

VOICE. I'll let you get off the hook. You were up on the Hill a week ago, and several members of Congress—Congressman Rodino, Congressman Edwards, Senator Biden, and others, asked to have some time to have some input into this. Are there any changes in this document that reflect the input of the past week?

Mr. SMITH. Yes, there are.

VOICE. Maybe some people could just point out what those are.

Mr. SMITH. Well, we don't think it's appropriate to point them out because we had input from a host of different sources: some from the Hill and some from elsewhere. But we don't think it's appropriate to specify who made what change or who recommended what changes. But changes were made within the past week.

Mr. WEBSTER. And they were not changes of policy, but simply to clarify where somebody said, "Does this mean that?" And we said, "No, we never intended that." "Well, put in a sentence of a clause and make it clear that you didn't mean that." So, things of that kind, I think—

Mr. SMITH. If you'd like us to take that out, we'd be glad to do so, Carl. [Laughter.]

VOICE. Criminal activity of the news media?

Mr. SMITH. Yes. [Laughter.]

VOICE. Well, if we can get a commitment, I think we'd accept it.

Mr. SMITH. I think you'd better read this in its coverall context, though, before you agree to that.

Mr. WEBSTER. Going back to—Judy—

Mr. SMITH. I think some of your other friends here might not like that.

Mr. WEBSTER. Judy—before you leave, Judy, I'm afraid we're going to leave it, and I wanted to make a point because we're sort of discussing this. Judy's point about the nuclear freeze thing—the Attorney General made the point that we wouldn't be investigating, except for indications of a purpose to commit violence, political or social, for political or social reasons.

But in terms—you mentioned the word "Soviet." And we would investigate Soviet involvement in any domestic organization through our foreign counterintelligence responsibilities and our foreign intelligence guidelines, and not these guidelines.

Mr. SMITH. Which are different; it's a different set of guidelines.

VOICE. When I entered the Justice Department today, unlike past times I was asked where I was going [inaudible] and the guard called [inaudible] and I asked him was that a new policy. And he said yes, there had been problems with leaks. [Laughter.]

[Inaudible.]

[Laughter.]

[Inaudible.] He said we're trying to stop [inaudible].

Mr. SMITH. Well, I—

VOICE. My question is, is that a new policy, that we're supposed to be required to tell who we're going to see?

Mr. SMITH. I think, Fred, you're going to have to talk to Kevin Ronney about that because this is the first time I've heard about it. I'm glad to see, however, that somebody's paying attention down there.

VOICE. One of the biggest changes in these new guidelines is to authorize the use of infiltration and informants during a preliminary inquiry in domestic security and under a standard different from the Levi standard, a standard that is even below your investigative standard, which you already say is below probable cause. The Senate Abscam Committee unanimously recommended that whenever a government agent, informant, or cooperating individual infiltrates any political, governmental, religious, or news media organization, that you have a finding that there is probable cause to believe that the operation is necessary to affect and prevent specific acts of criminality; why did you go in the exact opposite direction from the recommendation of the Abscam Committee?

Mr. SMITH. Well, of course, Abscam is quite a different situation from what we're talking about here.

VOICE. They're talking about preliminary inquiries under the use of informants and infiltration under general crimes, which is what you put this under now.

Mr. SMITH. Well, we haven't put it under general crimes. We have put it in the—we've established guidelines which include general crimes and domestic—

VOICE. Well, to do a preliminary inquiry you will now use the general crimes provision which allows informants and infiltration, new informants, which Levy prohib-

ited under a preliminary inquiry, which the Senate Abscam Committee specifically said should have a higher standard, a standard of probable cause, whenever it involved the infiltration of a political, religious, or news media organization, or use of informant.

Mr. SMITH. Well, of course, probable cause is not the standard that is involved with initiating investigations under these guidelines. Even the full investigation is initiated with less than probable cause, significantly less than probable cause. And certainly that would be true with the preliminary inquiry, and part of the effort with respect to these guidelines is to prevent criminal activity.

In other words, we are not waiting for the proverbial ticking to start. That's not the sole goal for the initiation of investigations. Certainly, that would not be true with respect to preliminary inquiries.

Mr. WEBSTER. I don't see us as investigating or penetrating or infiltrating political groups. We would be, if we used that technique, which would be one of the least intrusive methods, if we would come to the need for that, it would be on the basis that we are investigating groups engaged in or formed for the purpose of committing crimes, and in this case, crimes of violence. So it's not just—

VOICE. But actually—as you—as this is now drafted, you can use new informants and infiltration at less than that standard in a preliminary inquiry which you could not before.

Mr. WEBSTER. But always with a criminal nexus, not just to see what they're saying or whether it's proper.

VOICE [paraphrased]. Can you tell us why you did away with the listing of the four purposes that the target group must have for the opening of domestic security investigation. The earlier guidelines listed four particular purposes that they must have.

Mr. SMITH. Well, we think that's pretty well taken care of in the standards that we're enunciating here. In other words, reasonable indication as to whether or not two or more people are engaging in an enterprise to further political or social goals through the use in whole or in part of force or violence and in violation of a federal statute.

I think that certainly is—establishes the purpose.

VOICE. Overall, do you think that these new guidelines will make it easier to open and conduct investigations, or more difficult, or keep it about the same?

Mr. SMITH. I don't think that question can be easily answered. It depends entirely on the circumstances. There are certain—for example, if you're talking about the enterprise concept, it would be easier in the sense of being able to get at somebody who is running a safe house, for example, under these guidelines than it would be under the other guidelines.

In some cases there wouldn't be any change. Probably—I was going to say in most cases, but I guess there's really no way to quantify it.

VOICE [paraphrased]. But overall, would you say easier or more difficult?

Mr. WEBSTER. I think that overall it makes it easier to understand when a proper predicate has been laid to permit a domestic security investigation, either preliminary inquiry or full investigation. And in that sense, it furthers a worthy purpose of getting us into an investigation in time to avert the violence, which is one of the reasons that we wanted to have these guidelines more clear, more clearly understood in the field.

VOICE. Could you give some examples of some crimes that you feel the FBI would have done a better job operating under these guidelines [inaudible].

Mr. WEBSTER. Well, I can give you one or two specifics, but I would also give you a generalization. There was a general pattern in the field of preferring to open bank robbery investigations or other type of general crimes investigations rather than to open what we call a 100 series or domestic security investigation where we could maintain and develop ongoing intelligence about a criminal enterprise. There was concern and apprehension about personal liability by the agents and a tendency to duck in and out of these cases without having been as thorough and complete as I think we need to be in a world that has encountered substantial amounts of terrorist activity.

VOICE [inaudible]. Brink's case?

Mr. WEBSTER. Yes. I think it would be fair to say that in that case we probably would have—although I don't say we could have prevented the bank robbery in that case, there are aspects of that investigation that take it far deeper than we originally thought, and I think a willingness to look at the May 19 operation, for instance, might have moved our investigation along more effectively than we had done so.

We took advantage of some very good breaks. And I think we've done—I'm very proud of the investigation that has followed. But there was some reluctance to open

investigations under existing standards in organizations that have—that clearly meet the standards of purposeful violence.

VOICE [inaudible]. Do you have any reason to believe that the presence of terrorism, or the threat of terrorism is any greater in this country today than it was in '76?

Mr. WEBSTER. Well, of course in '76 we had all kinds of investigations, thousands of investigations. We're not in any way proposing to return to that. This standard would not permit us to do that. It would not open that sort of thing up.

You invite me to make a lecture on terrorists. I know you really don't want me to do that, but we had 51 incidents last year, but we also had a number of deaths and substantial injuries.

VOICE [inaudible].

Mr. WEBSTER. No. That's an increase. We had 42 the year before and one death.

VOICE. Were more than half of those investigated under the FCI guidelines?

Mr. WEBSTER. Yes, I think that's so.

VOICE. Not under these guidelines at all?

Mr. WEBSTER. That's right. We—I don't want to overstate the threat, but currently, you might be interested, I think it's fair to say looking back over our investigations, we were running 4,868 cases in March of 1976. As of December 1982 we had 73 cases.

VOICE. Domestic security?

Mr. WEBSTER. Domestic security cases.

VOICE. Do you expect a large increase now under these new guidelines?

Mr. WEBSTER. And at the present time we have substantially less.

VOICE. Do you expect any increase now, then?

Mr. WEBSTER. No, I really don't expect to see a substantial increase, Ron, but I do expect us to get in when we should and to be able to maintain a low level monitoring on organizations where we've previously, under interpretations of the previous guidelines, been required to close out and close out informants.

Informants are not fungible. You can't just pull them off the shelf and use them for some other organization. And the ability to maintain a low level investigation, I think, is important, where we're seeing, as we did in the Brinks case, violent groups, or individuals who are associated with violent groups, going quiet for sustained periods of time and then becoming violent again.

VOICE. Director, on page 3, can you tell us what it means, the very last sentence. I don't understand it. You say, "Nothing in these guidelines prohibits the Bureau from advocating the scope and nature (inaudible) particular location or sector of the economy."

What does that mean?

It's the very bottom of page 3, General [inaudible].

Mr. WEBSTER. I'm going to let John answer because he can give you the history of it, too. It's a carryover. It's not a—

Mr. HOTIS. It is a carryover from the old guidelines, and the purpose of that, as I recall—and again, let me emphasize we didn't focus on [inaudible] with the idea of seeing whether we could raise new issues [inaudible].

VOICE. You're not slipping one in?

Mr. HOTIS. No.

VOICE. OK.

Mr. HOTIS. No. And this is going to be to make sure that we can determine—

Mr. SMITH. Just don't make any commitments now, John. [Laughter.]

Mr. HOTIS. General crime conditions, et cetera, to warrant an allocation of resources in an area without focusing on a particular person. That's [inaudible].

VOICE. OK, economy; what is the reference to the economy? Industry? Commerce?

Mr. SMITH. Whatever it meant in '76, it still means.

[Simultaneous conversation.]

VOICE [inaudible]. In the movie business. That's a sector of the economy. If there's crimes going on, you're now just free to go in—

Mr. HOTIS. No, no, no. Of course, any time [inaudible] if you're talking about [inaudible] particular people or particular organizations [inaudible]—

Mr. WEBSTER. The public source stuff.

Mr. HOTIS [inaudible]. Information as to whether there's something that might cause us to maybe take a look and see whether an allocation of resources should be made in a particular area.

VOICE. To what extent—

Mr. HOTIS. [Inaudible.]

VOICE. To what extent will the FBI now collect, read, catalog, file, and otherwise maintain literature in the public domain by suspect groups or potentially suspect groups?

Mr. WEBSTER. Well, currently we have not been doing any of it because of ambiguities in the guidelines and some concern about whether or not we could do—to what extent we could do it under the Privacy Act. The guidelines make clear a common sense thing, that if we are conducting investigations, we have a right to collect public source material that has to do with that particular group or criminal enterprise.

Where it becomes more cloudy are the provisions of the Privacy Act that preclude us from collecting any information about something that was not under investigation. And we currently have that under review in Mary Lawton's Office of Legal Policy (sic) to determine just what we could collect without violating the Privacy Act.

Thus, the Attorney General makes it clear that he's not trying to restrict our collection of public source material even more than the Privacy Act restricts us.

Mr. SMITH. Well, of course, the case law in this area is very, very confused. There are no fair lines that have been drawn by the courts as to exactly what the Privacy Act does require and does not require in certain areas. But this is designed really as a clarification, in effect saying that this activity can be done so long as it does not interfere with the requirements of the Privacy Act, whatever they may be.

[End cassette side one.]

VOICE [inaudible]. Warning against intrusion in such areas as white collar crime. That's not in the previous Civiletti guidelines. Why is there this new admonition involving white collar crime and the reduction in the restrictions on domestic security investigations?

Mr. HOTIS. No, that's in the old guidelines.

Mr. SMITH. Where?

Mr. WEBSTER. I can't find it in the old guidelines. We didn't add anything—

Mr. SMITH. There's no change in the general kinds and no change—

Mr. WEBSTER. OK. I do see it now; I'm sorry.

Mr. SMITH. The only change has to do with the domestic security terrorism guidelines.

VOICE [inaudible]. In any way to obtain [inaudible].

Mr. WEBSTER. I think we now have a set of guidelines which integrate general crimes and racketeering and domestic security with a consistency of approach, a symmetry that makes it easy for an agent to understand. We just can't—we train and train and retrain, and we can't expect our agents to carry around all the nuances and subtleties of different sets of guidelines. This, I think, is cleaner; it's clearer; it's positive in tone.

It encourages the Bureau to conduct lawful investigations which are directed at gathering intelligence to solve crimes and prevent, where possible, crimes of violence directed against political and social institutions.

Mr. SMITH. It also has the virtue of having a common standard that applies—

Mr. WEBSTER. Yes, a common standard—

Mr. SMITH. To all of these activities.

Mr. WEBSTER. Agents don't have to shifting gears in their minds or going back to supervisors for this. We can train them. In fact, we're already planning a series of seminars around the country to make sure that these are implemented promptly and correctly.

VOICE. [Inaudible.]

Mr. WEBSTER. No.

VOICE. [Inaudible.]

Mr. WEBSTER. No.

VOICE. [Inaudible.]

Mr. DE CAIR. Now that we're down to the nuts and bolts, if there's maybe one more question—

VOICE [inaudible]. Nexus. That confused me a little bit. Is there a smaller quantum of connection or activity that a person can—a person is engaged in that would bring him within these guidelines that would not have brought him into the Levy guidelines.

Mr. WEBSTER. I would say I don't think so, but I'd have to think that one all the way through. What I'd like to make clear, what we're getting away from is the use of talking about criminal standards, which in the minds of some mistakenly suggests a probable cause requirement. We've never had probable cause as a basis for starting or conducting investigations.

That's the kind of heavy evidence that a court requires before a court permits you to use a wiretap or to enter a home and search it, Fourth Amendment rights.

VOICE. But simply put, do you see individuals today who would be subject to investigation by the FBI under these guidelines who would not have been subject to such an investigation last week under the old guidelines? If so, what brings that person within these guidelines.

Mr. SMITH. Well, that's an awfully hard question to answer in the context of—

VOICE. These are new, simplified guidelines.

Mr. SMITH. Well, they're simpler. The standard is there, and you, really outside the context of specific situations, there is—it's very difficult to say—to give, for example, it's guide possible through the use of informants at the preliminary inquiry now that something might be developed which would not have been developed under the old guidelines. That's quite possible; in which case, I suppose you could say that under the new guidelines that something could have happened that would not happen under the old guidelines.

VOICE [inaudible]. What about evidence at hand?

Mr. SMITH. What do you mean by—

VOICE [inaudible]. Might someone be the subject of an investigation today where they wouldn't be yesterday?

Mr. SMITH. Well, but the evidence at hand, the purpose of these guidelines is to develop evidence. In other words, if you had evidence at hand, then you have a question as to whether or not you prosecute, you don't prosecute, you do this, you don't do that.

The purpose of these guidelines has to do with investigations in the development of evidence.

VOICE. [Inaudible.]

Mr. WEBSTER. One area that might fall in Carl's question is the nature of today's terrorists. And we don't have to identify—have a separate threshold for each type of group that might be participating. You might have a surface group that is different in context or membership that is a support mechanism for another enterprise. If we can tie them to the criminal enterprise and show a jointness of purpose, we can investigate the whole group, all the little front groups and side numbers.

VOICE. You could not have under the Levi guidelines?

Mr. WEBSTER. Serious question about it. We had to approach each one separately.

VOICE. Is it a question about how far out they are from the center of the activity? Is that what we're talking about?

Mr. WEBSTER. Well, there has to be a common purpose. They have to be really part of a conspiracy.

VOICE. Knowing participation in the criminal aspect of it?

Mr. WEBSTER. I think so, yes.

Mr. SMITH. Certainly the concept of an enterprise is designed to make it easier to accomplish the ultimate result. So if you look at it from that standpoint, it would be easier under these guidelines than under the former guidelines.

VOICE. Which would—would that allow you to raise money for legal—would that allow you to investigate a group that was raising money for the legal defense of one of these domestic security groups?

Mr. HOTIS. It operates only where somebody is doing something tangible and the objective is criminal. If they were solely raising legal support money—

Mr. WEBSTER. No.

Mr. SMITH. If that's all.

VOICE. Just one last one. Is there any limit to how long low level monitoring could go on? I don't see it here. Could it continue 35 years like it did in the SWP investigation?

Mr. SMITH. Well, you still have to be able to meet the threshold.

EXHIBIT D



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

TESTIMONY

BY

WILLIAM H. WEBSTER

DIRECTOR

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

DOMESTIC SECURITY INVESTIGATION GUIDELINES

ON

APRIL 27, 1983



FBI/DOJ

THANK YOU MR. CHAIRMAN. I JOIN MR. JENSEN IN EXPRESSING MY APPRECIATION FOR THIS OPPORTUNITY TO DISCUSS THE NEW DOMESTIC SECURITY/TERRORISM GUIDELINES. SOME OF OUR COMMENTS MAY OVERLAP, BUT I THINK IT IS IMPORTANT TO EXPLAIN FOR THE RECORD WHAT IS INTENDED BY SOME OF THE MORE SIGNIFICANT FEATURES OF THE GUIDELINES.

AS YOU KNOW, I HAVE STATED ON SEVERAL OCCASIONS THAT THE 1976 GUIDELINES WORKED REASONABLY WELL AND I CONTINUE TO BELIEVE SO. BUT I WOULD BE SURPRISED IF THE INITIAL EFFORT TO DEAL WITH THIS COMPLEX AND VERY SENSITIVE AREA OF OUR RESPONSIBILITIES WAS THE LAST WORD ON THE SUBJECT. WRITING RULES FOR THE CONDUCT OF INVESTIGATIONS IS A RELATIVELY NEW UNDERTAKING. I KNOW OF NO COMPARABLE EFFORT ON THE FEDERAL, STATE OR LOCAL LEVEL TO ESTABLISH STANDARDS FOR DETERMINING WHO SHOULD BE INVESTIGATED, WHEN AND UNDER WHAT CIRCUMSTANCES, AND WHAT KINDS OF TECHNIQUES SHOULD BE UTILIZED AT VARIOUS STAGES OF THE INVESTIGATIVE PROCESS. FURTHERMORE, THE GUIDELINES WERE NOT MEANT TO BE STATIC. THEY WERE PROMULGATED ON AN EXPERIMENTAL BASIS WITH THE UNDERSTANDING THAT THEY COULD BE REVIEWED AFTER OUR EXPERIENCE UNDER THEM COULD BE ADEQUATELY ASSESSED.

I THINK IT SHOULD BE POSSIBLE NOW TO REACH FIRMER CONCLUSIONS THAN COULD HAVE BEEN ACCEPTED A FEW YEARS AGO ABOUT THE DOMESTIC SECURITY PROBLEM AND THE CONSEQUENCES OF VARIOUS WAYS OF DEALING WITH IT. I BELIEVE ALSO THAT THE CONTOURS OF THE PROBLEM HAVE CHANGED SUBSTANTIALLY OVER THE PAST SEVERAL YEARS WITH THE RESULT THAT THE OLD RULES NO LONGER PROVIDE ADEQUATE GUIDANCE IN DEALING WITH THE KINDS OF TERRORIST GROUPS THAT WE ARE CONFRONTED WITH TODAY. FOR THE MOST PART, THESE GROUPS ARE MORE MILITANT, MORE DISCIPLINED, AND MORE VIOLENT THAN ORGANIZATIONS THAT WERE COMMONLY INVESTIGATED IN THE SIXTIES AND SEVENTIES. IT WAS TIME, THEREFORE, TO REEXAMINE THE RULES.

THE OLD GUIDELINES WERE DRAFTED OVER SEVEN YEARS AGO AT A TIME WHEN SERIOUS QUESTIONS WERE RAISED IN CONGRESS AND ELSEWHERE

ABOUT THE SCOPE AND PROPRIETY OF THE BUREAU'S DOMESTIC INTELLIGENCE ACTIVITIES. IT WAS ORIGINALLY INTENDED THAT GUIDELINES WOULD BE PREPARED FOR ALL ASPECTS OF THE BUREAU'S INVESTIGATIVE ACTIVITIES, BUT THE DEVELOPMENT OF RULES GOVERNING DOMESTIC SECURITY MATTERS WAS GIVEN THE HIGHEST PRIORITY. THE PROCESS PROVED TO BE MORE DIFFICULT AND TIME-CONSUMING THAN HAD BEEN ANTICIPATED, WITH THE RESULT THAT THE ORIGINAL GUIDELINES COMMITTEE FAILED TO COMPLETE ITS WORK. IN FACT, GUIDELINES GOVERNING THE REMAINING AREAS OF THE BUREAU'S CRIMINAL JURISDICTION -- GENERAL CRIMES AND RACKETEERING ENTERPRISE INVESTIGATIONS -- WERE NOT PUT INTO EFFECT UNTIL DECEMBER 1980. IN THE MEANTIME, THE BUREAU OPERATED FOR A PERIOD OF ALMOST FIVE YEARS WITH A DISCRETE SET OF RULES THAT APPLIED ONLY TO A SMALL SEGMENT OF ITS OPERATIONAL RESPONSIBILITIES. FURTHERMORE, THESE RULES WERE VIEWED BY SOME AS A CONDEMNATION OF THE PAST AND AS A MEANS OF PHASING OUT THIS ASPECT OF THE BUREAU'S HISTORY. THEY ACQUIRED, PERHAPS UNFAIRLY, NEGATIVE CONNOTATIONS WHICH SUGGESTED TO OUR AGENTS THAT THEY CONDUCTED SUCH INVESTIGATIONS AT THEIR PERIL.

ADDED TO THESE CONCERNS WAS AN INCREASING AMOUNT OF LITIGATION DIRECTED AT AGENTS WHO PARTICIPATED IN DOMESTIC SECURITY INVESTIGATIONS. A NUMBER OF THESE CASES ARE STILL IN THE COURTS TODAY, WITH AGENTS THREATENED BY PERSONAL LIABILITY FOR ACTIVITIES UNDERTAKEN ON BEHALF OF THE GOVERNMENT.

IN THAT CLIMATE, IT IS NOT SURPRISING THAT BUREAU AGENTS HAVE TURNED INCREASINGLY TO OTHER FORMS OF INVESTIGATION TO ACCOMPLISH THEIR INVESTIGATIVE NEEDS. WE HAVE SEEN A PATTERN DEVELOPING IN THE FIELD WHEREBY AGENTS PREFER TO OPEN SAY A BANK ROBBERY CASE OR SOME OTHER FORM OF GENERAL CRIMES INVESTIGATION. THERE WAS ALSO A TENDENCY TO DUCK IN AND OUT OF DOMESTIC SECURITY CASES WITHOUT BEING AS THOROUGH AND COMPLETE AS I BELIEVE WE NEED TO BE IN SUCH MATTERS. THE BRINK'S CASE, INVOLVING THE ROBBERY OF AN ARMORED CAR IN NYACK, NEW YORK, ILLUSTRATES MY POINT. I AM NOT SUGGESTING, OF COURSE, THAT WE COULD HAVE PREVENTED THE ROBBERY IN THAT CASE OR THE SUBSEQUENT MURDER OF TWO POLICE OFFICERS, BUT THERE ARE ASPECTS OF THAT INVESTIGATION THAT TAKE IT FAR DEEPER

THAN WE ORIGINALLY THOUGHT. I THINK A WILLINGNESS TO LOOK AT OTHER ORGANIZATIONS WHICH MAY HAVE PROVIDED SOME DIRECT SUPPORT FOR THE CRIMINAL ACTIVITIES OF THE GROUP INVOLVED, FOR INSTANCE, MIGHT HAVE MOVED OUR INVESTIGATION ALONG MORE EFFECTIVELY THAN HAD BEEN THE CASE. WE TOOK ADVANTAGE OF SOME GOOD BREAKS AND I AM VERY PROUD OF THE INVESTIGATION THAT FOLLOWED, BUT THERE WAS SOME RELUCTANCE TO OPEN A DOMESTIC SECURITY CASE ON PERSONS OR GROUPS WHO SEEMED RATHER CLEARLY TO MEET THE STANDARDS OF THE OLD GUIDELINES. THIS MAKES IT DIFFICULT TO DEVELOP AND MAINTAIN ONGOING INTELLIGENCE ABOUT THE CRIMINAL ENTERPRISE AND TO DETERMINE WHETHER ANY FURTHER INVESTIGATIVE INTEREST IS WARRANTED FOLLOWING PROSECUTION OF THE CASE. OUR PURPOSE, THEREFORE, IS TO REAFFIRM THE NEED FOR CRIMINAL INTELLIGENCE IN DOMESTIC SECURITY/TERRORISM MATTERS AND TO TREAT THESE INVESTIGATIONS AS AN INTEGRAL PART OF THE FBI'S GENERAL LAW ENFORCEMENT RESPONSIBILITIES. IN THE PROCESS WE SOUGHT ALSO TO SIMPLIFY THE RULES, TO CLARIFY AMBIGUITIES AND TO MINIMIZE THE DIFFERENCES IN THE VARIOUS GUIDELINES GOVERNING OUR CRIMINAL INVESTIGATIONS SO THAT AGENTS COULD APPLY THE RULES AS THE NEEDS OF THE SITUATION REQUIRE.

ONE OF THE CHANGES WORTH MENTIONING HERE INVOLVES THE ELIMINATION OF THE THREE LEVELS OF DOMESTIC SECURITY INVESTIGATIONS. THIS STREAMLINES THE RULES AND BRINGS THEM INTO CONFORMITY WITH THE PROCEDURES USED IN RACKETEERING ENTERPRISE INVESTIGATIONS. THERE IS ONLY ONE FORM OF DOMESTIC SECURITY/TERRORISM INVESTIGATION UNDER THE CURRENT GUIDELINES --A FULL INVESTIGATION. IN THE FUTURE THE FBI WILL RELY ON PRELIMINARY INQUIRIES CONDUCTED UNDER THE GENERAL CRIMES SECTION OF THE GUIDELINES TO FOLLOW UP ON INFORMATION OR ALLEGATIONS THAT DO NOT WARRANT A FULL INVESTIGATION. THIS NARROWS THE FOCUS OF OUR INQUIRY BUT PERMITS WIDER LATITUDE IN THE USE OF CERTAIN INVESTIGATIVE TECHNIQUES. THE PRELIMINARY AND LIMITED INVESTIGATIONS AUTHORIZED UNDER THE OLD RULES HAD THE SAME CHARACTERISTICS AS THE FULL INTELLIGENCE INVESTIGATION ITSELF. THEY ARE BROADER AND LESS DISCRIMINATE THAN GENERAL CRIMES INVESTIGATIONS, LARGELY BECAUSE WE ARE DEALING WITH ORGANIZATIONAL ACTIVITY NOT SPECIFIC CONDUCT. THE PURPOSE IS TO DETERMINE THE SIZE AND GEOGRAPHICAL DIMENSIONS OF THE GROUP

AND TO ASSESS ITS INTENTIONS AND CAPABILITIES TO ENGAGE IN FUTURE CRIMES.

A GENERAL CRIMES INQUIRY, ON THE OTHER HAND, FOCUSES ON SPECIFIC PERSONS AND OFFENSES AND IS DIRECTED PRIMARILY TOWARD DETERMINING WHETHER A FULL CRIMINAL INVESTIGATION IS WARRANTED. THIS PROVIDES A FRAMEWORK FOR THE INQUIRY AND CONFINES OUR COLLECTION EFFORTS LARGELY TO EVIDENCE THAT WOULD ESTABLISH THE ELEMENTS OF A CRIME. IT ALSO REDUCES THE PRIVACY AND FIRST AMENDMENT CONCERNS AND ALLOWS US TO EXERCISE GREATER DISCRETION IN THE USE OF CERTAIN INVESTIGATIVE TECHNIQUES. AT THE SAME TIME, THE GUIDELINES CAUTION THAT AGENTS SHOULD CONSIDER WHETHER THE INFORMATION SOUGHT COULD BE OBTAINED BY MEANS WHICH INVOLVE LESS INTRUSION ON THE SUBJECT'S PRIVACY. WE ATTEMPT TO REGULATE THOSE TECHNIQUES WHICH ARE MORE INTRUSIVE THAN OTHERS BY REQUIRING THE PRIOR APPROVAL OF A SUPERVISORY AGENT. THAT IS TRUE, FOR EXAMPLE, IN THE DEVELOPMENT OF NEW INFORMANTS, THE USE OF PRETEXT INTERVIEWS, OR INTERVIEWS OF A POTENTIAL SUBJECT'S EMPLOYER OR COWORKER. ADDITIONAL LIMITATIONS ARE IMPOSED WHERE "HIGHLY INTRUSIVE" TECHNIQUES ARE INVOLVED. WE HAVE NOT TRIED TO DEFINE THAT TERM BECAUSE THE INTRUSIVENESS OF A PARTICULAR TECHNIQUE WILL OFTEN DEPEND ON THE MANNER AND CIRCUMSTANCES IN WHICH IT IS EMPLOYED. SOME OF THE MORE OBVIOUS EXAMPLES, HOWEVER, WOULD INCLUDE PEN REGISTERS, CONSENSUAL MONITORING OF TELEPHONE CONVERSATIONS, AND THE USE OF LOCATOR DEVICES. AN INFORMANT WOULD ALSO FALL IN THAT CATEGORY IF HE IS USED IN A MANNER THAT INVOLVES A SIGNIFICANT INTRUSION INTO ONE'S PRIVATE AFFAIRS. OF COURSE, ANY TECHNIQUE THAT REQUIRES PROBABLE CAUSE, SUCH AS MAIL COVERS, SEARCHES AND SEIZURES, OR ELECTRONIC SURVEILLANCES WOULD NOT BE AVAILABLE DURING A PRELIMINARY INQUIRY BECAUSE THE THRESHOLD STANDARD FOR THOSE TECHNIQUES COULD NOT BE SATISFIED,

WHILE THE GUIDELINES ALLOW US GREATER FLEXIBILITY DURING THE EARLY STAGES OF AN INVESTIGATION, THEY DO NOT ALTER OUR CLEARLY STATED OBLIGATION TO RESPECT CONSTITUTIONAL SAFEGUARDS REFLECTED ESPECIALLY IN THE FIRST AMENDMENT. THEY DO PERMIT US, CONSISTENT WITH THAT OBLIGATION, TO SEEK AN EARLIER INTERDICTION OF UNLAWFUL VIOLENT ACTIVITY.

LET ME SAY A FEW WORDS NOW ABOUT THE ADVOCACY PROVISION, BECAUSE IT IS ONE THAT HAS ATTRACTED MORE ATTENTION THAN ANY OTHER SECTION OF THE GUIDELINES. WE ARE NOT INTERESTED IN CONSTITUTIONALLY PROTECTED ADVOCACY OF UNPOPULAR IDEAS OR LAWFUL POLITICAL DISSENT. BUT IT MUST BE MADE CLEAR TO OUR AGENTS THAT STATEMENTS WHICH TAKEN IN CONTEXT PRESENT A CREDIBLE THREAT OF CRIME SHOULD NOT BE IGNORED. THE MERE FACT THAT ONE "GOES PUBLIC" WITH STATEMENTS INDICATING AN INTENT TO ENGAGE IN CRIME OR URGING OTHERS TO DO SO DOES NOT CONVEY SOME SPECIAL PROTECTION UNDER THE CONSTITUTION. INDEED, AS MR. JENSEN POINTED OUT, SOME STATEMENTS SUCH AS THOSE THREATENING THE PRESIDENT OR A FOREIGN OFFICIAL ARE THEMSELVES CRIMES; OTHERS MAY CONSTITUTE EVIDENCE OF CRIME OR OF AN INTENT TO COMMIT A CRIME. IT IS IMPORTANT TO UNDERSTAND, HOWEVER, THAT THE ADVOCACY PROVISION FOUND IN THE GENERAL PRINCIPLES SECTION OF THE GUIDELINES DOES NOT CONVEY ANY SPECIAL AUTHORITY WITH RESPECT TO SUCH MATTERS. IT MUST BE IMPLEMENTED IN ACCORDANCE WITH THE OTHER SUBSTANTIVE PROVISIONS OF THE GUIDELINES AND ONLY WHEN THE THRESHOLD STANDARDS FOR AN INQUIRY OR FULL INVESTIGATION ARE SATISFIED. WITH RESPECT TO PRELIMINARY INQUIRIES, FOR EXAMPLE, IT MUST BE SHOWN THAT THE ADVOCACY POINTS TO "THE POSSIBILITY OF CRIMINAL CONDUCT." FURTHERMORE, THE PURPOSE OF THE CRIMINAL INQUIRY IS SOLELY TO OBTAIN "THE INFORMATION NECESSARY TO MAKE AN INFORMED JUDGMENT AS TO WHETHER A FULL INVESTIGATION IS WARRANTED."

UNDER THE TERMS OF THE GUIDELINES, A FULL GENERAL CRIMES INVESTIGATION CAN BE INITIATED ONLY WHEN THE FACTS OR CIRCUMSTANCES REASONABLY INDICATE THAT A FEDERAL CRIME HAS BEEN, IS BEING OR WILL BE COMMITTED. A DOMESTIC SECURITY/TERRORISM INVESTIGATION CAN BE CONDUCTED WHEN THE FACTS OR CIRCUMSTANCES REASONABLY INDICATE THAT TWO OR MORE PERSONS ARE ENGAGED IN AN ENTERPRISE THAT SEEKS TO ACCOMPLISH POLITICAL OR SOCIAL CHANGE THROUGH VIOLENCE.

IN VIEW OF THESE REQUIREMENTS, IT IS UNLIKELY THAT THE FBI WOULD INITIATE A FULL INVESTIGATION WITHOUT SOME ADDITIONAL FACTS OR CIRCUMSTANCES BEYOND THE STATEMENTS THEMSELVES. AS A PRACTICAL MATTER, FBI AGENTS ARE SELDOM CONFRONTED WITH WORDS ALONE;

THERE IS OFTEN SOME ADDITIONAL INFORMATION AVAILABLE ABOUT THE PERSONS INVOLVED OR THE CIRCUMSTANCES IN WHICH THE STATEMENT WAS MADE. THAT IS IMPLICIT IN THE REQUIREMENT THAT STATEMENTS ADVOCATING CRIMINAL ACTIVITY MUST BE VIEWED IN CONTEXT BEFORE FURTHER INQUIRY WILL BE AUTHORIZED. WE HAVE TAKEN THE ADDITIONAL STEP OF INSTRUCTING OUR FIELD OFFICES TO RESOLVE ALL SUCH MATTERS IN DOMESTIC SECURITY/TERRORISM CASES THROUGH PRELIMINARY INQUIRIES WHEREVER POSSIBLE. DURING THE IMPLEMENTATION STAGE OF THESE GUIDELINES, ANY FURTHER INQUIRIES BASED ON SUCH STATEMENTS WILL BE REPORTED PROMPTLY TO FBI HEADQUARTERS FOR REVIEW. NONETHELESS, WE THINK IT WOULD BE UNWISE TO FORECLOSE THE POSSIBILITY OF A FULL INVESTIGATION ON ADVOCACY ALONE, PARTICULARLY A GENERAL CRIMES INVESTIGATION, WHERE THE STATEMENTS SUGGEST A SERIOUS AND IMMEDIATE PROSPECT OF HARM. WE INTEND TO MONITOR THE SITUATION CAREFULLY AT FBI HEADQUARTERS DURING THE INITIAL STAGES OF IMPLEMENTATION TO PROVIDE ANY ADDITIONAL GUIDANCE THAT MAY BE REQUIRED.

I AM CONFIDENT, MR. CHAIRMAN, THAT THE NEW RULES WILL PERMIT US TO PERFORM OUR MISSION WITH GREATER CONFIDENCE AND EFFECTIVENESS WHILE PROVIDING THE NECESSARY ASSURANCE TO THE PUBLIC THAT WE ARE ACTING PROPERLY UNDER THE LAW.

MR. CHAIRMAN, THAT CONCLUDES MY PREPARED TESTIMONY AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THE SUBCOMMITTEE MIGHT HAVE.

EXHIBIT E

Airtel

3/17/83

Director, FBI

All SACs
All LEGATSATTORNEY GENERAL'S GUIDELINES FOR THE
CONDUCT OF DOMESTIC SECURITY/TERRORISM
INVESTIGATIONS, EFFECTIVE MARCH 21, 1983

Reference teletype to all SACs dated 3/7/83, captioned as above.

Enclosed for each recipient is a copy of the new Attorney General's Guidelines governing the conduct of FBI investigations concerning domestic security/terrorism (DS/T) matters. These Guidelines will become effective on 3/21/83.

With the exception of some modifications noted below, instructions regarding implementation of the provisions governing general crimes investigations and racketeering enterprise investigations set forth in Memorandum to All Special Agents dated 12/30/80 are still applicable. Some of the more significant features of the new rules governing domestic security/terrorism investigations are described below.

These Guidelines change the way the FBI conducts investigations and administratively manages DS/T cases. These cases are now governed by the rules set forth in Part III of the Guidelines and are considered another form of criminal intelligence investigation. As the Guidelines indicate, criminal intelligence investigations differ from general crimes investigations in several important respects. As a general rule, an investigation of a completed criminal act is normally confined to determining who committed that act and with securing evidence to establish the elements of the particular offense. An intelligence investigation of an ongoing criminal enterprise, on the other hand, must determine the size and composition of the group involved, its geographic dimensions, its past acts and intended criminal goals, and its capacity for harm. While a standard criminal investigation terminates with the decision to prosecute or not to prosecute, the investigation of a criminal enterprise does not necessarily end, even though one or more of the participants may have been prosecuted. Thus the new Guidelines reaffirm the need for criminal intelligence in domestic security/terrorism matters and treat these investigations as an integral part of the FBI's general law enforcement responsibilities.

Criminal Enterprise Concept

The new rules governing domestic security/terrorism investigations employ the "criminal enterprise" concepts so successfully used in organized crime cases. This allows the FBI to cross organizational lines in a domestic security/terrorism investigation without regard to what a particular group or element of an organization might call itself. It should enable the Bureau to deal more effectively with groups who knowingly act in furtherance of the criminal objectives of the enterprise. Thus persons who provide safehouses, money, weapons or otherwise knowingly support the criminal activities of the terrorist enterprise can be investigated as part of the same criminal enterprise. It will no longer be necessary to open a separate investigation of such groups with a separate justification.

The enterprise concept will also permit the FBI to focus its investigation upon violent factions of a larger group, without investigating the entire group. The new approach recognizes that

terrorist groups today have a fluid membership and often lack organizational structure, yet function as a single enterprise directed toward a common goal.

Preliminary Inquiries

Preliminary investigations and limited investigations have been deleted from the Domestic Security/Terrorism Guidelines. There is only one form of domestic security/terrorism investigation under the current Guidelines. You must rely on the authority under general crimes preliminary inquiries to meet investigative needs in domestic security/terrorism matters.

A preliminary general crimes inquiry is more limited in scope and purpose than the preliminary investigation formerly authorized under the Domestic Security Guidelines. However, they permit greater latitude in the use of investigative techniques particularly where informants are involved. The only investigative techniques that are unavailable during a preliminary inquiry are those which require probable cause: mail covers, search and seizure and electronic surveillance. At the same time, the Attorney General's Guidelines caution that Agents consider whether the information sought could be obtained by means which involve less intrusion on the subject's privacy. As an example, if a discreet inquiry to local law enforcement officials would produce the necessary information, it might be inappropriate to question neighbors.

Subject to this general guidance on intrusiveness, Agents require no special prior authorization to check FBI files, public records or sources, governmental records, established informants or confidential sources, to interview subjects, complainants or others having knowledge of the facts or to conduct surveillances. Prior authorization of a Supervisory Agent is required before employers or coworkers may be interviewed, pretext interviews are conducted or new informants are developed. Other more intrusive techniques, such as the use of consensual monitoring, may be employed only in compelling circumstances and when other investigative means are not likely to be successful. "Compelling circumstances" are circumstances requiring the use of such techniques to determine the validity of information or allegations concerning possible serious criminal activity such as a threat to life or substantial property interests, the destruction or alteration of evidence, or the serious impairment or hindrance of an investigation.

Preliminary inquiries may be authorized by field supervisors, but in all situations, the inquiry shall be completed within 90 days after initiation of the first investigative step, unless authorized by the Bureau. Subsequent authorizations for extensions are limited to 30-day periods and will be based upon a written request from the field division including a statement of reasons justifying further "inquiry" when there is no "reasonable indication" which would allow a full investigation.

For administrative purposes, all preliminary inquiries under the General Crimes Section of the Guidelines that relate to domestic security/terrorism matters will be reported in the 100 classification.

Domestic Security/Terrorism Investigations

A domestic security/terrorism investigation may be initiated when "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." This parallels the standard now followed in racketeering enterprise investigations and should eliminate any perceptions that actual or imminent commission of a violent crime is a prerequisite to investigation. It is sufficient if the facts or circumstances indicate that the enterprise seeks to accomplish its political or social

objectives through violence. The standard requires a valid factual predicate and law enforcement purpose, but it is substantially lower than the "probable cause" threshold required for arrest.

Separate domestic security/terrorism investigations will not be authorized for individual members of the criminal enterprise. The investigation of the enterprise itself will encompass the activities of the individual participants. For administrative purposes, a series of sub-files on individual members can be utilized.

Full investigations will be authorized by the Director or the Assistant Director, Criminal Investigative Division, based upon a written communication from the requesting field division setting forth the facts or circumstances reasonably indicating the existence of an enterprise, the goals of which were described above. This authorization will be valid for 180 days. Subsequently, an investigation may be continued for 180-day periods based upon renewed authorization from FBIHQ obtained prior to the expiration of the previously authorized extension.

In order to comply with the Department of Justice (DOJ) requirements, the office of origin will submit a letterhead memorandum (LHM) along with the first request for an extension of the full DS/T investigation. Thereafter, an annual LHM reflecting progress in the "enterprise" investigation will be prepared for dissemination to DOJ on all pending investigations.

FBIHQ will be advised of the closing of all full DS/T investigations as well as any preliminary inquiries which were reported to the Bureau.

Continuation of Investigations

There has been a tendency in the past to close domestic security investigations and terminate informant coverage when the violent activity of the group has been dormant for a period of time. If the organization became active again, it was often a difficult and time-consuming process to redevelop informant coverage. The new Guidelines permit the FBI to monitor organizations who may be temporarily inactive, but whose prior record or stated objectives indicate a need for continuing federal interest, so long as the threshold standard for investigation is satisfied. Under those circumstances, the investigation may be placed in a pending status but informant coverage can be maintained to the extent necessary to determine whether there is any change in the criminal objectives of the enterprise.

Advocacy of Crime

There has been some confusion about whether advocacy of crime, without specific conduct, can provide the bases for an investigation. The new Guidelines make it clear that advocacy of crime is not immune from investigation. When statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

The point to remember with respect to implementation of the advocacy provision is that the basis for initiating an inquiry or investigation is not the advocacy itself, but rather that the statement of advocacy taken in context presents a credible threat of harm. To the extent possible, all such matters should be resolved through preliminary inquiries. During the implementation stage of these Guidelines, any further inquiries based on statements of advocacy should be reported promptly to FBI Headquarters (Terrorism Section) for review.

Publicly Available Information

The new Guidelines explicitly authorize the collection of publicly available information consistent with the Privacy Act.

FBI Headquarters is currently consulting with the DOJ concerning interpretation of this provision in an effort to ascertain the bounds of this collection effort and to determine administrative procedures for processing the information collected. All field offices are instructed to limit their collection of publicly available information to cases under preliminary inquiry or full investigation in accordance with the Guidelines. Further instructions with regards to implementation of this provision will be forthcoming.

As is noted above, some minor modifications have been made in those portions of the Guidelines governing general crimes investigations and racketeering enterprise investigations. You should be particularly alert to the following changes:

- (1) Preliminary inquiries have been extended from 60 to 90 days;
- (2) a dissemination provision has been added in Part V which governs the dissemination of information acquired from any investigation conducted pursuant to the Guidelines;
- (3) cooperation with Secret Service -- in some cases where investigations have been closed which meet the threshold requirements for a preliminary inquiry or full investigation, the FBI may conduct an inquiry or investigation at the request of the Secret Service consistent with the investigative priorities of the field office, See Part VI;
- (4) narcotics violations have been added to the list of offenses that may trigger a racketeering enterprise investigation;
- (5) undisclosed participation in the activities of organizations -- this provision does not grant authority to influence rights protected by the First Amendment. It is intended to be a safeguard to insure that our investigations do not unintentionally influence the exercise of those rights, See IV B(3);
- (6) specific reporting rules concerning the use of consensual electronic monitoring techniques have been deleted. Until notified otherwise, you should continue to follow current reporting requirements as set forth in U. S. Attorney's Manual 9-7.013.

It is noted that representatives from the Director's Office and the Terrorism Section will be present during Regional Conferences scheduled during the month of April, 1983, to discuss implementation of these Guidelines. Field offices are directed to Bureau teletype dated March 11, 1983, captioned as above.

LETTERS

EXHIBIT F

STROM THURMOND, S.C., CHAIRMAN
 CHARLES MCC. MATHIAS, JR., MD.
 PAUL LARALT, NEV.
 ORRIN G. HATCH, UTAH
 ROBERT DOLE, KANS.
 ALAN K. SIMPSON, WYO.
 JOHN EAST, N.C.
 CHARLES E. GRASSLEY, IOWA
 JEREMIAH DENTON, ALA.
 ARLEN SPECTER, PA.
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 ROBERT C. BYRD, W. VA.
 HOWARD M. METZENBAUM, OHIO
 DENNIS DECONCINI, ARIZ.
 PATRICK J. LEAHY, VT.
 MAX BAUCUS, MONT.
 HOWELL HEFLIN, ALA.
 TUDOR BETAINE LIDE, CHIEF COUNSEL
 QUENTIN CHOMMELIN, JR., STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

March 2, 1983

The Honorable William French Smith
 Attorney General of the United States
 and
 The Honorable William Webster
 Director, Federal Bureau of Investigation
 Department of Justice
 10th Street and Constitution Avenue, N.W.
 Washington, D.C. 20530

Dear Attorney General Smith and Judge Webster:

Tuesday morning, I received the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations. I understand that you have an urgent deadline for receiving comments on this very significant document.

Since returning from the START talks in Geneva on Monday, I have been trying very hard to make up for a week's absence, and since Tuesday I have spent a substantial amount of time with the Guidelines. I have a number of immediate questions which I want to share with you now, but I very much want the chance to give you a broader and more thorough review. Given the many months each of you devoted to analyzing policy options and translating your conclusions to appropriate language, I owe no less a commitment to this important effort.

For the moment, let me raise with you a number of questions about the Guidelines:

1. What was the reason for eliminating the need for a "valid factual predicate" when instituting domestic security investigations?
2. You state that there must be an "objective, factual basis for initiating the investigation; a mere hunch is insufficient." Would a mere hunch be sufficient for instituting a preliminary inquiry?
3. Do you intend the general standards governing preliminary inquiries to be applicable in the domestic security area?
4. If the answer to the above question is yes, would the Guidelines permit infiltration of targeted groups during a preliminary inquiry stage?
5. What would constitute compelling circumstances warranting highly intrusive investigatory techniques at the preliminary inquiry stage?
6. What is the scope of the meaning of the term "highly intrusive" technique as used in the section governing preliminary inquiries?

7. Unlike the current Levi Guidelines, the new Guidelines permit preliminary inquiries and investigations based solely on statements which "indicate an apparent intent to engage in crime." Given the confusion I raised earlier concerning the need to establish a factual predicate to initiate a preliminary inquiry, what kind of violent rhetoric would be sufficient to "indicate an apparent intent to engage in crime" necessary to initiate a preliminary inquiry?

8. The Guidelines state, "nothing in these Guidelines is intended to prohibit the FBI from collecting and maintaining publicly available information consistent with the Privacy Act." What are the limits on how this information could be collected, organized, indexed, retrieved, and stored?

9. Does the scope of a domestic terrorist investigation include authority to investigate persons acting in furtherance of objectives other than criminal objectives of a domestic terrorist group?

10. Does the authority to investigate the finances of a domestic terrorist group include the authority to investigate individuals or groups who have given financial support to such an organization without knowledge that those funds would be used for a criminal purpose?

11. What are the limits, both in time and scope, of continued FBI monitoring of groups that have not engaged in recent acts of violence, and pose no immediate threat of harm?

I understand that the Department takes the position that these Guidelines are a restructuring and a fine tuning of the current Levi Guidelines. Having studied the testimony of the Department and the Bureau before the Subcommittee on Security and Terrorism, I agree with you that no more than fine tuning of the Levi Guidelines is necessary or appropriate. Until I have had a chance to more completely study the new Guidelines and receive the answers to my questions, I can express no final opinion as to whether I believe that your proposed Guidelines could provide authority to substantially depart from existing standards and practices.

Given the great amount of time these Guidelines have been under review and the serious questions which I, and I understand other members of Congress have concerning their scope, I urge you to delay publication of these Guidelines for a week or two, until we have had a chance to more fully discuss these issues. I assure you that once I receive answers to my questions, I will be able to quickly give you any suggestions I have for changing the Guidelines.

I would like to bring one other matter to your attention. I understand that once issued, you contemplate a delayed effective date for the Guidelines. I trust that until they are actually in effect, you are open to additional viewpoints. And on that point, it would be helpful for those interested in the issues raised by the document to have the opportunity to comment informally during the delay period. This opportunity will provide you with useful insights from the states, from the bar, and from academic experts and will help these communities to understand both your final text and the reasons for your policy choices.

I very much appreciate your courtesies in this matter.

Sincerely,

PATRICK J. LEAHY
United States Senator

PJL:jsp

STROM THURMOND, S.C. CHAIRMAN
 CHARLES MCC. MATHIAS, JR., MD.
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 VINTON DEVANE LIDE, CHIEF COUNSEL
 QUENTIN CROHMELIN, JR., STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

March 7, 1983

The Honorable William French Smith
 Attorney General of the United States
 and
 The Honorable William Webster
 Director, Federal Bureau of Investigation
 Department of Justice
 10th Street and Constitution Avenue, N.W.
 Washington, D.C. 20530

Dear Attorney General Smith and Judge Webster:

On March 2, I sent you a letter which raised a number of questions concerning the draft of the new Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations which you had provided me. I understand that these new Guidelines will be released today, and will be effective March 21.

Following my March 2 letter, my Judiciary Committee counsel, John Podesta, had the opportunity to discuss these questions with a representative of the Department of Justice, Hank Habicht, and a representative of the FBI, John Hotis. These discussions have served to reassure me that the intent of the new Guidelines is to restructure and clarify existing authorities so that the FBI can better focus its investigative resources on the detection, prevention, and prosecution of specific violations of federal law.

I would like to briefly state my understanding of the Department's and Bureau's interpretations of the new Guidelines.

First, under the new Guidelines, a preliminary inquiry cannot be undertaken on the basis of a "mere hunch." To begin a preliminary inquiry, an agent must have an objective, articulable reason to believe that a full investigation may be warranted. However, when reviewing the stated reasons to begin a preliminary inquiry, an FBI supervisor may consider the experienced judgment of the agent recommending the need for the inquiry.

Second, preliminary inquiries in the Domestic Security/Terrorism area are narrower under the new Guidelines than preliminary investigations under the Levi Guidelines in that they are focused solely on past, current, or future instances of criminal conduct. Before beginning an investigation of an enterprise itself, the FBI must meet the "reasonable indication" threshold applicable to all full investigations. At the preliminary inquiry stage, the FBI would not be investigating the structure or scope of an enterprise or the relationship of its members. Putting this another way, the focus of a preliminary inquiry is the criminal conduct of people not the structure of an organized group or enterprise. Thus, the Guidelines do not permit the FBI to infiltrate an enterprise at the preliminary inquiry stage to determine its structure, scope or relationship of its members.

Third, section III.B.3.a(i) should read as follows:

the members of the enterprise and any other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise.

The word "criminal" had been inadvertently left out of the copy you provided me.

Fourth, in investigating the finances of the enterprise, the FBI could collect information about a financier of the enterprise only if the financier were a member of the enterprise or likely to be

knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the enterprise.

Fifth, while the use of violent rhetoric could be probative on the question of whether a person intends to engage in crime, the predicate for instituting an inquiry or investigation is not the rhetoric itself, but rather, that there exists a credible threat that a crime has been, is being, or will be committed. The new Guidelines do not make an individual who uses extreme rhetoric any more susceptible to investigation than he or she would be under the current Levi Guidelines.

Sixth, the FBI will not index by individual name the publicly available information which it collects and maintains.

Finally, section III.B.4.d of the new Guidelines does not permit the FBI to continue to monitor the activities of a domestic/security/terrorism enterprise if the investigatory threshold contained in section III.B.1 of the Guidelines is no longer met.

If my understanding as to the above stated points is correct, I believe that these new Guidelines do not constitute a significant departure from the current Guidelines and practices under which the Bureau operates. If the above stated points are not consistent with your interpretations of the Guidelines, I would, of course, have to reassess that judgment. Therefore, if I have misstated the Department's or the Bureau's interpretations of the new Guidelines, or if you wish to add any material to the points I have made above, I ask that you inform me immediately.

I would like to make three specific recommendations for change in the Guidelines which I ask you to consider before the Guidelines become effective.

First, I believe that the second and third sentences of section III.B.4.d are needlessly confusing. It appears that they permit low level monitoring of inactive groups where the threshold for investigation has passed. I understand that this is not your intent. Therefore, I suggest deletion of those two sentences.

Second, while I understand that there are circumstances under which violent rhetoric would, in and of itself, lead a reasonable law enforcement officer to check out leads about whether a person or group would engage in violent activity, I think that authorizing a full investigation based on extreme rhetoric alone could have a serious negative effect on the free exercise of First Amendment rights. Therefore, I would recommend that the last sentence of the third paragraph of the General Principles section be amended to read as follows:

When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, a preliminary inquiry under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

Finally, I would ask that you consider the findings and recommendations of the Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice. The final report of the Select Committee was made publicly available this morning. The Select Committee made a series of detailed and specific recommendations which could be usefully incorporated into your Guidelines or any revision of the undercover Guidelines which you undertake in the future.

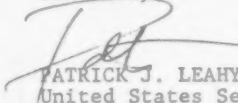
I will not run through all of the specific recommendations in this letter, but after you have had a chance to review the final report of the Select Committee, I would like to discuss these matters with you at greater length.

As I expressed to you earlier in this letter, your staffs have been most helpful in providing me with information about your interpretation of these Guidelines. It would be greatly appreciated if you could provide me with further responses to three of the questions I posed in my earlier letter of March 2. Therefore, I ask that you send me written responses to questions (5), (6) and (8) of that letter.

I hope that you will have an early opportunity to consider my comments, and that we will have the opportunity to discuss these matters in the near future.

Again, I want to thank you for your courtesies.

Sincerely,


PATRICK J. LEAHY
United States Senator

PJL:jsp



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

March 25, 1983

Honorable Patrick J. Leahy
United States Senate
Washington, D. C. 20510

Dear Senator Leahy:

This is in response to your letter of March 7, 1983, concerning a draft of the new Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations.

I am pleased to hear that the discussions between your Judiciary Committee Counsel, John Podesta, and representatives of the FBI and the Department of Justice have served to reassure you regarding the intent of the new Guidelines. We are confident that these modifications will enhance our effectiveness without diminishing any of the important safeguards that have been in place over the past several years. Your letter asks us to confirm whether your understanding of certain provisions of the Guidelines is correct, and to make certain changes in the Guidelines before they become effective. You also requested a written response to questions (5), (6), and (8) of your earlier letter of March 2, 1983.

While we might differ on the language used to explain those portions of the Guidelines that you have cited, your understanding of them is essentially correct. It is accurate to say, for example, that a mere hunch would not normally satisfy the requirements for a preliminary inquiry, but the threshold standard for an inquiry is somewhat lower than you have stated. Also, we would prefer to reserve judgment on any indexing procedures that might be used with respect to publicly available information, until the Department has had an opportunity to study relevant provisions of the Privacy Act of 1974.

With regard to your specific recommendations, I believe that your concern about Section III.B.4.d has since been addressed. The language of that provision now makes clear that the enterprise must meet the threshold standard if the investigation is to continue beyond the annual review. That was our original intent, of course, but it was apparently subject to misunderstanding.

Your second recommendation would modify the statement on advocacy found in the General Principles section of the Guidelines to bar a full investigation. As you know, that section does not convey any special authority with respect to such matters. It must be implemented in conjunction with the other substantive provisions of the Guidelines. With respect to preliminary inquiries, for example, it must be shown that the advocacy points to "the possibility of criminal conduct." Furthermore, the purpose of the criminal inquiry is solely to obtain "the information necessary to make an informed judgment as to whether a full investigation is warranted."

Under the terms of the Guidelines, a full general crimes investigation can be initiated only when the facts or circumstances reasonably indicate that a federal crime has been, is being or will be committed. A domestic security/terrorism investigation can be conducted when the facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise that seeks to accomplish political or social change through

violence. Furthermore, statements advocating criminal activity must be viewed in context before further inquiry will be authorized.

In view of these requirements, it is unlikely that the FBI would initiate a full investigation without some additional facts or circumstances beyond the statements themselves. Nonetheless, we are not prepared to rule out the possibility of a full investigation on advocacy alone, particularly where the statement suggests a serious and immediate threat to human life. You should know, however, that we have instructed our field offices to resolve all such matters through preliminary inquiries, whenever possible. We intend to monitor the situation carefully at FBI Headquarters during the initial stages of implementation to provide any additional guidance that may be required.

You have also asked us to consider the findings and recommendations of the Senate Select Committee to study law enforcement undercover activities components of the Department of Justice. We have received a copy of the final report of the Senate Select Committee and of S. 804, the Undercover Operations Act of 1983. It does not appear that any of the recommendations are inconsistent with the provisions of the new Guidelines. But we will examine them carefully to determine whether any revisions of the Undercover Guidelines are warranted.

In addition, you requested written responses to questions (5), (6), and (8) of your letter dated March 2, 1983. Question 5 asks, "What would constitute compelling circumstances warranting highly intrusive investigatory techniques at the preliminary inquiry stage?" As stated in our recent communication to all field offices, "compelling circumstances" are circumstances requiring the use of such techniques to determine the validity of information or allegations concerning possible serious criminal activities such as a threat to life or substantial property interest, the destruction or alteration of evidence, or the serious impairment or hindrance of an investigation.

(6) "What is the scope of the meaning of the term 'highly intrusive' technique as used in the section governing preliminary inquiries?" As you know, that section of the Guidelines was simply carried forward from rules that have been in place since December, 1980. It does not announce any new policy nor change any of our current procedures in such matters. We have not tried to define the term because the intrusiveness of a particular technique will often depend on the manner and circumstances in which it is employed. Some of the more obvious examples, however, would include pen registers, consensual monitoring of telephone conversations, and the use of locator devices. Of course, any technique that requires probable cause such as mail covers, searches and seizures or electronic surveillances would not be available during a preliminary inquiry because the threshold standard for those techniques is too high.

Finally, you asked us to comment on how publicly available information would "be collected, organized, indexed, retrieved, and stored." As I indicated earlier, we are unable to respond to that question until we receive further guidance from the Department of Justice. In the meantime, that provision will be applied only where a preliminary inquiry or full investigation is underway.

I assure you that your comments will be given very careful consideration and I hope that we will have the opportunity to discuss these matters further.

Sincerely,



William H. Webster
Director

EXHIBIT G

STROM THURMOND, S.C., CHAIRMAN
 CHARLES MCC. NATHIAS, JR., MD.
 PAUL LAXALT, NEV.
 ORRIN G. HATCH, UTAH
 ROBERT DOLE, KANS.
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 MAX BAUCUS, MONT.
 HOWELL HEFLIN, ALA.

VINTON DYVANE LIDE, CHIEF COUNSEL AND STAFF DIRECTOR
 MARK H. BITENSTEIN, MINORITY CHIEF COUNSEL

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, D.C. 20510

March 3, 1983

The Honorable William French Smith
 Attorney General
 Department of Justice
 Constitution Avenue and 10th Street NW
 Washington, D.C.

Dear General Smith:

Recently I had the opportunity to analyze your draft Guidelines on General Crimes, Racketeering Enterprises, and Domestic Security/Terrorism Investigations for the Federal Bureau of Investigation. It is reassuring that they appear to hew closely to the Department of Justice guidelines which have governed these several activities over the last seven years and which generally have been considered satisfactory. As in the past, the primary concern of those of us in the Congress charged with oversight has not only been with the language of the guidelines but its interpretation. This letter is written with that in mind.

I feel strongly that with these guidelines no legitimate national interest is served by changing or expanding investigative authorities within the United States unless specific instances can be cited when current guidelines have impaired necessary and proper investigative activities. On their face the changes in your guidelines, properly interpreted and with some clarifications, are consistent with this principle.

There are, however, several provisions in the draft Guidelines that I think should be revised. They are broader than need be and, therefore, if not narrowly interpreted, could lead to improper intrusions on constitutionally protected activities. Three provisions are of particular concern. I recommend the following:

1) In Section 1, paragraph 3, revise the last sentence to read: "When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, a preliminary inquiry under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm."

This change is consistent with current practice and avoids the problems that would arise from directing full investigations at individuals solely on the basis of speech that is, arguably, protected by the Constitution.

2) In Section III.B.3.a.(i) revise the scope of domestic security/terrorism investigations to read:

"(i) the members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf or in furtherance of the criminal activities of the enterprise."

This change would discourage the use of intrusive techniques against innocent Americans who might endorse the political or social objections but not the illegal means of the enterprise.

3) Revise Section IV.B.3. to read: "undisclosed participation in the activities of an organization by an undercover employee or cooperating private individual in a manner that may affect the exercise of rights protected by the First Amendment must be approved by FBIHQ, with notification to the Department of Justice."

In terms of the current draft, there are a variety of "affects" that an undercover employee or cooperating individual could have on such an organization that would be highly objectionable from a civil liberties point of view yet would not strictly "influence" the exercise of First Amendment rights.

In addition to these specific recommended changes I have a number of questions of interpretation of your revisions and about current practice:

First, will conducting domestic security/terrorism preliminary inquiries subject to the provisions of the general crimes guidelines result in the use of intrusive techniques in these inquiries much more frequently than under current practice? There is some disagreement as to whether field offices strictly follow the old Levi guidelines or the more flexible Civiletti general crimes guidelines permitting the use of intrusive techniques in preliminary inquiries.

Second, paragraph 5 of the "General Principles" section of the revision clarifies what I believe probably was the original intent of the Levi guidelines, that "nothing is intended to prohibit the FBI from collecting publicly available information." It seems to me that massive amounts of publicly available information could be entered into the Bureau's files and then cross-indexed to individuals, such as members of Congress or other public officials or personalities, who are not under investigation. This practice was the subject of considerable criticism in the past. What will be your practice with respect to records management of publicly available information?

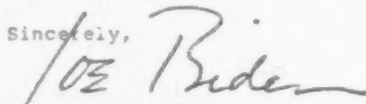
Third, what effort have you made to make these revisions consistent with the Senate Select Committee on ABSCAM recommendations for FBI undercover investigations?

Fourth, Section 1, paragraph 4 sets out a principle for termination of investigations "when all logical leads have been exhausted and no legitimate law enforcement interest justifies...continuance." What situation beyond exhaustion of leads would justify continued law enforcement interest?

I urge you to consider carefully these recommendations and questions. Other than sharing a copy with Judge Webster I intend to keep this letter confidential until the issuance of new guidelines and look forward to your prompt response.

Thank you for this opportunity to comment on the guidelines.

Sincerely,


Joseph R. Biden, Jr.
Ranking Minority Member

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 24, 1983

Honorable Joseph R. Biden
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Biden:

This is in response to your March 3, 1983 letter to the Attorney General concerning the revised Attorney General's Guidelines on General Crimes, Racketeering Enterprises and Domestic Security/Terrorism Investigations. As we communicated to you during discussions in February, we believe that these revisions will help our agents proceed with more confidence and effectiveness in investigations of terrorists and enterprises prone to criminal violence, without removing the basic safeguards for individual rights which formed the core of the 1976 Guidelines.

We very much appreciate your concerns and suggestions regarding the Guidelines. We endeavor to respond to your specific suggestions below, but can assure you generally that these revisions were carefully crafted to protect against improper intrusions on constitutionally-protected activities.

Your first recommendation would modify the statement on advocacy in the General Principles to bar a full investigation. Agents are seldom confronted with words alone, but it must be made clear to our agents that statements which in context present a credible threat of crime should not be ignored. This is a recognition of the fact that some statements are themselves crimes, e.g., 18 U.S.C. 35 (false bomb threats), 18 U.S.C. 112 (threatening a foreign official), 18 U.S.C. 871 (threatening the President). Others may constitute evidence of intent to commit crime. The guidelines and the instructions issued by the FBI to its field offices both emphasize that investigations should not be based on the proper exercise of First Amendment rights and that any statements considered when deciding whether to investigate must be considered in the context in which they are made. You should be aware that these matters will normally involve preliminary inquiries in any event.

With regard to your second suggestion, I am pleased to say that we have already revised Section III.B.3.a(i) to make clear that domestic security investigations should focus only on those persons likely to be knowingly acting in furtherance of the criminal objectives of an enterprise which is the appropriate subject of investigation.

Your third suggestion proposes changes in Section IV.B.3. Let me assure you that this section does not create any new authority for the FBI to "influence" the exercise of First Amendment rights in the course of an authorized investigation; it simply provides safeguards in cases where that may occur. We appreciate your concerns in this area and will certainly keep your suggestion in mind as we assess our experience with this provision in practice.

With regard to your first question regarding the use of intrusive techniques in preliminary inquiries, we must clarify that there no longer exists a domestic security/terrorism preliminary inquiry. All law enforcement preliminary inquiries must be performed pursuant to the General Crimes preliminary inquiries which have been in effect since December, 1980. These inquiries are narrower in scope than the old domestic security preliminary inquiries. General crimes inquiries focus only upon obtaining "the information necessary to make an informed judgment as to whether a full investigation is warranted." There has been no change in policy or procedures with respect to these inquiries. The least intrusive means necessary must always be employed, and techniques requiring probable cause -- such as searches, mail covers, and electronic surveillance -- will not be permitted in inquiries.

Your second question concerns the limitations which the Privacy Act places upon the collection and retention of publicly available information by the FBI. As the Guidelines make clear, we will permit such activity only to the extent which the law permits it. Inasmuch as the Privacy Act is less than fully clear on this subject, we are currently reviewing the law at the Department of Justice, and will convey our view to OMB -- the agency charged with coordinating Privacy Act compliance throughout the government. As soon as we have adopted an opinion on this subject, we will share it with you and your colleagues.

You have also asked whether we considered the findings and recommendations of the Senate Select Committee to study law enforcement undercover activities by components of the Department of Justice. We have received a copy of the final report of the Senate Select Committee and of S. 804, the Undercover Operations Act of 1983. As you know, undercover investigations are the subject of entirely separate guidelines. It does not appear that any of the Select Committee recommendations are inconsistent with the provisions of the revised Guidelines. But we will examine them to determine whether any revisions of the Undercover Guidelines are warranted.

Finally, you ask what sort of legitimate law enforcement interest would warrant continuing an investigation "when all logical leads had been exhausted." The Guideline provision you cite applies to all criminal investigations. In significant criminal investigations, it would clearly be wise to give up immediately after exhausting existing leads, at least until ensuring that no new leads may develop. Moreover, the domestic security/terrorism provisions in the Guidelines make clear that investigations can not be continued when the investigative threshold ceases to be satisfied.

As noted earlier, we very much appreciate the concerns and comments expressed in your letter and in our earlier discussions. We have already taken many into account. The current version is also not immune from further revision as we learn from our experience during implementation. We, of course, will continue to welcome your questions and concerns in coming months.

Sincerely,



Robert A. McConnell
Assistant Attorney General

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